

**SERIAL 03122 - IGA PAPER: TOILET, TOWEL, NAPKIN,
& FACIAL TISSUE,
AZ STATE CONTRACT AD030015**

AD030015

**CONTRACT PERIOD BEGINNING JULY 01, 2003
ENDING ~~JUNE 30, 2004~~
JUNE 30, 2005**

TO: All Departments

FROM: Department of Materials Management

**SUBJECT: Contract for PAPER: TOILET, TOWEL, NAPKIN,
& FACIAL TISSUE,
AZ STATE CONTRACT AD030015**

Attached to this letter is a listing of vendors available to Maricopa County Agencies utilizing the Arizona State Procurement Office Contract **AD030015**. The using agency and other interested parties may access and electronic version of this contract from the Materials Management Web site at:

http://www.maricopa.gov/materials/Awarded_Contracts/search.asp.

Please note: Price Agreement Purchase Orders (PG documents) may be generated using the information from this list. Use Commodity Code(s) B0102862 - \$28.27/CASE, B0103181 - \$11.59/CASE

All purchases of product(s) listed on the attached pages of this letter are to be obtained from the listed contractor(s).



Contract Summary

State Procurement Office

100 N. 15th Ave

Suite 104

Phoenix, AZ 85007-3223

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VENDOR: Western Paper Distributors

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CONTRACT NUMBER: AD030015 - 001

CONTRACT TITLE: Paper: Toilet, Towel, Napkin, & Facial Tissues

CONTRACT TYPE: Statewide Contract

CONTRACT PERIOD: July 01, 2003

THRU: June 30, 2004

CONTRACTOR: Western Paper Distributors

CONTACT NAME : John Sandve

ADDRESS: 5502 W Buckeye Rd

Phoenix, AZ 85043

TELEPHONE: 602 278-5208

FAX NUMBER: 602 269-5053

CONTRACTING AUTHORITY: State Procurement Office

CONTACT NAME: Elmer Garcia

TELEPHONE: 602 542-9126

F.O.B. TERMS: FOB Delivered

DELIVERY: 14 Days ARO

PAYMENT TERMS: Net 30 Days

**COMPLETE PRICING
INFORMATION WEBPAGE:** <http://sporas.ad.state.az.us/ContractInfo/GS/AD030015/>



Uniform Terms and Conditions

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Version 7

1. **Definition of Terms.** As used in this Solicitation and any resulting Contract, the terms listed below are defined as follows:
 - 1.1 "Attachment" means any item the Solicitation requires the Offeror to submit as part of the Offer.
 - 1.2 "Contract" means the combination of the Solicitation, including the Uniform and Special Instructions to Offerors, the Uniform and Special Terms and Conditions, and the Specifications and Statement or Scope of Work; the Offer and any Best and Final Offers; and any Solicitation Amendments or Contract Amendments.
 - 1.3 "Contract Amendment" means a written document signed by the Procurement Officer that is issued for the purpose of making changes in the Contract.
 - 1.4 "Contractor" means any person who has a Contract with the State.
 - 1.5 "Days" means calendar days unless otherwise specified.
 - 1.6 "Exhibit" means any item labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the Solicitation.
 - 1.7 "Gratuity" means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.
 - 1.8 "Materials" means all property, including equipment, supplies, printing, insurance and leases of property but does not include land, a permanent interest in land or real property or leasing space.
 - 1.9 "Procurement Officer" means the person, or his or her designee, duly authorized by the State to enter into and administer Contracts and make written determinations with respect to the Contract.
 - 1.10 "Services" means the furnishing of labor, time or effort by a contractor or subcontractor which does not involve the delivery of a specific end product other than required reports and performance, but does not include employment agreements or collective bargaining agreements.
 - 1.11 "Subcontract" means any Contract, express or implied, between the Contractor and another party or between a subcontractor and another party delegating or assigning, in whole or in part, the making or furnishing of any material or any service required for the performance of the Contract.
 - 1.12 "State" means the State of Arizona and Department or Agency of the State that executes the Contract.
 - 1.13 "State Fiscal Year" means the period beginning with July 1 and ending June 30,
2. **Contract Interpretation**
 - 2.1 Arizona Law. The Arizona law applies to this Contract including, where applicable, the Uniform Commercial Code as adopted by the State of Arizona and the Arizona Procurement Code, Arizona Revised Statutes (A.R.S.) Title 41, Chapter 23, and its implementing rules, Arizona Administrative Code (A.A.C.) Title 2, Chapter 7.
 - 2.2 Implied Contract Terms. Each provision of law and any terms required by law to be in this Contract are a part of this Contract as if fully stated in it.
 - 2.3 Contract Order of Precedence. In the event of a conflict in the provisions of the Contract, as accepted by the State and as they may be amended, the following shall prevail in the order set forth below:
 - 2.3.1 Special Terms and Conditions;
 - 2.3.2 Uniform Terms and Conditions;
 - 2.3.3 Statement or Scope of Work;
 - 2.3.4 Specifications;
 - 2.3.5 Attachments;
 - 2.3.6 Exhibits;
 - 2.3.7 Documents referenced or included in the Solicitation.
 - 2.4 Relationship of Parties. The Contractor under this Contract is an independent Contractor. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.
 - 2.5 Severability. The provisions of this Contract are severable. Any term or condition deemed illegal or invalid shall not affect any other term or condition of the Contract.
 - 2.6 No Parole Evidence. This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.
 - 2.7 No Waiver. Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver



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of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.

3. Contract administration and operation.

- 3.1 Records. Under A.R.S. § 35-214 and § 35-215, the Contractor shall retain and shall contractually require each subcontractor to retain all data and other "records" relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract. All records shall be subject to inspection and audit by the State at reasonable times. Upon request, the Contractor shall produce a legible copy of any or all such records.
- 3.2 Non-Discrimination. The Contractor shall comply with State Executive Order No. 99-4 and all other applicable Federal and State laws, rules and regulations, including the Americans with Disabilities Act.
- 3.3 Audit. Pursuant to ARS § 35-214, at any time during the term of this Contract and five (5) years thereafter, the Contractor's or any subcontractor's books and records shall be subject to audit by the State and, where applicable, the Federal Government, to the extent that the books and records relate to the performance of the Contract or Subcontract.
- 3.4 Facilities Inspection and Materials Testing. The Contractor agrees to permit access to its facilities, subcontractor facilities and the Contractor's processes or services, at reasonable times for inspection of the facilities or materials covered under this Contract. The State shall also have the right to test, at its own cost, the materials to be supplied under this Contract. Neither inspection of the Contractor's facilities nor materials testing shall constitute final acceptance of the materials or services. If the State determines non-compliance of the materials, the Contractor shall be responsible for the payment of all costs incurred by the State for testing and inspection.
- 3.5 Notices. Notices to the Contractor required by this Contract shall be made by the State to the person indicated on the Offer and Acceptance form submitted by the Contractor unless otherwise stated in the Contract. Notices to the State required by the Contract shall be made by the Contractor to the Solicitation Contact Person indicated on the Solicitation cover sheet, unless otherwise stated in the Contract. An authorized Procurement Officer and an authorized Contractor representative may change their respective person to whom notice shall be given by written notice to the other and an amendment to the Contract shall not be necessary.
- 3.6 Advertising, Publishing and Promotion of Contract. The Contractor shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the Procurement Officer.
- 3.7 Property of the State. Any materials, including reports, computer programs and other deliverables, created under this Contract are the sole property of the State. The Contractor is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. The Contractor shall not use or release these materials without the prior written consent of the State.
- 3.8 Ownership of Intellectual Property
Any and all intellectual property, including but not limited to copyright, invention, trademark, tradename, service mark, and/or trade secrets created or conceived pursuant to or as a result of this contract and any related subcontract ("Intellectual Property"), shall be work made for hire and the State shall be considered the creator of such Intellectual Property. The agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract shall own (for and on behalf of the State) the entire right, title and interest to the Intellectual Property throughout the world. Contractor shall notify the State, within thirty (30) days, of the creation of any Intellectual Property by it or its subcontractor(s). Contractor, on behalf of itself and any subcontractor (s), agrees to execute any and all document(s) necessary to assure ownership of the Intellectual Property vests in the State and shall take no affirmative actions that might have the effect of vesting all or part of the Intellectual Property in any entity other than the State. The Intellectual Property shall not be disclosed by contractor or its subcontractor(s) to any entity not the State without the express written authorization of the agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract.

4. Costs and Payments

- 4.1 Payments. Payments shall comply with the requirements of A.R.S. Titles 35 and 41, Net 30 days. Upon receipt and acceptance of goods or services, the Contractor shall submit a complete and accurate invoice for payment from the State within thirty (30) days.
- 4.2 Delivery. Unless stated otherwise in the Contract, all prices shall be F.O.B. Destination and shall include all freight delivery and unloading at the destination.
- 4.3 Applicable Taxes.



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- 4.3.1 Payment of Taxes. The Contractor shall be responsible for paying all applicable taxes.
- 4.3.2 State and Local Transaction Privilege Taxes. The State of Arizona is subject to all applicable state and local transaction privilege taxes. Transaction privilege taxes apply to the sale and are the responsibility of the seller to remit. Failure to collect such taxes from the buyer does not relieve the seller from its obligation to remit taxes.
- 4.3.3 Tax Indemnification. Contractor and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall, and require all subcontractors to hold the State harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal, and/or state and local laws and regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.
- 4.3.4 IRS W9 Form. In order to receive payment the Contractor shall have a current I.R.S. W9 Form on file with the State of Arizona, unless not required by law.
- 4.4 Availability of Funds for the Next State fiscal year. Funds may not presently be available for performance under this Contract beyond the current state fiscal year. No legal liability on the part of the State for any payment may arise under this Contract beyond the current state fiscal year until funds are made available for performance of this Contract.
- 4.5 Availability of Funds for the current State fiscal year. Should the State Legislature enter back into session and reduce the appropriations or for any reason and these goods or services are not funded, the State may take any of the following actions:
- 4.5.1 Accept a decrease in price offered by the contractor;
- 4.5.2 Cancel the Contract
- 4.5.3 Cancel the contract and re-solicit the requirements.
- 5. Contract changes**
- 5.1 Amendments. This Contract is issued under the authority of the Procurement Officer who signed this Contract. The Contract may be modified only through a Contract Amendment within the scope of the Contract. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by the procurement officer in writing or made unilaterally by the Contractor are violations of the Contract and of applicable law. Such changes, including unauthorized written Contract Amendments shall be void and without effect, and the Contractor shall not be entitled to any claim under this Contract based on those changes.
- 5.2 Subcontracts. The Contractor shall not enter into any Subcontract under this Contract for the performance of this contract without the advance written approval of the Procurement Officer. The Contractor shall clearly list any proposed subcontractors and the subcontractor's proposed responsibilities. The Subcontract shall incorporate by reference the terms and conditions of this Contract.
- 5.3 Assignment and Delegation. The Contractor shall not assign any right nor delegate any duty under this Contract without the prior written approval of the Procurement Officer. The State shall not unreasonably withhold approval.
- 6. Risk and Liability**
- 6.1 Risk of Loss: The Contractor shall bear all loss of conforming material covered under this Contract until received by authorized personnel at the location designated in the purchase order or Contract. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with the Contractor regardless of receipt.
- 6.2 Indemnification
- 6.2.1 Contractor/Vendor Indemnification (Not Public Agency) The parties to this contract agree that the State of Arizona, its' departments, agencies, boards and commissions shall be indemnified and held harmless by the contractor for the vicarious liability of the State as a result of entering into this contract. However, the parties further agree that the State of Arizona, its' departments, agencies, boards and commissions shall be responsible for its' own negligence. Each party to this contract is responsible for its' own negligence.
- 6.2.2 Public Agency Language Only Each party (as 'indemnitor') agrees to indemnify, defend, and hold harmless the other party (as 'indemnitee') from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as 'claims') arising out of bodily injury of any person (including death) or property damage but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its' officers, officials, agents, employees, or volunteers."
- 6.3 Indemnification - Patent and Copyright. The Contractor shall indemnify and hold harmless the State against any liability, including costs and expenses, for infringement of any patent, trademark or copyright arising out of Contract performance or use by the State of materials furnished or work performed under this Contract. The State shall reasonably notify the Contractor of any claim for which it



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may be liable under this paragraph. If the contractor is insured pursuant to A.R.S. § 41-621 and § 35-154, this section shall not apply.

6.4 Force Majeure.

6.4.1 Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force majeure. The term "*force majeure*" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts; injunctions-intervention-acts; or failures or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.

6.4.2 Force Majeure shall not include the following occurrences:

6.4.2.1 Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market;

6.4.2.2 Late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition; or

6.4.2.3 Inability of either the Contractor or any subcontractor to acquire or maintain any required insurance, bonds, licenses or permits.

6.4.3 If either party is delayed at any time in the progress of the work by force majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practicable and no later than the following working day, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be delivered or mailed certified-return receipt and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by Contract Amendment for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Contract.

6.4.4 Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that such delay or failure is caused by force majeure.

6.5 Third Party Antitrust Violations. The Contractor assigns to the State any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to the Contractor, toward fulfillment of this Contract.

7. Warranties

7.1 Liens. The Contractor warrants that the materials supplied under this Contract are free of liens and shall remain free of liens.

7.2 Quality. Unless otherwise modified elsewhere in these terms and conditions, the Contractor warrants that, for one year after acceptance by the State of the materials, they shall be:

7.2.1 Of a quality to pass without objection in the trade under the Contract description;

7.2.2 Fit for the intended purposes for which the materials are used;

7.2.3 Within the variations permitted by the Contract and are of even kind, quantity, and quality within each unit and among all units;

7.2.4 Adequately contained, packaged and marked as the Contract may require; and

7.2.5 Conform to the written promises or affirmations of fact made by the Contractor.

7.3 Fitness. The Contractor warrants that any material supplied to the State shall fully conform to all requirements of the Contract and all representations of the Contractor, and shall be fit for all purposes and uses required by the Contract.

7.4 Inspection/Testing. The warranties set forth in subparagraphs 7.1 through 7.3 of this paragraph are not affected by inspection or testing of or payment for the materials by the State.

7.5 Year 2000.

7.5.1 Notwithstanding any other warranty or disclaimer of warranty in this Contract, the Contractor warrants that all products delivered and all services rendered under this Contract shall comply in all respects to performance and delivery requirements of the specifications and shall not be adversely affected by any date-related data Year 2000 issues. This warranty shall survive the expiration or termination of this Contract. In addition, the defense of *force majeure* shall not apply to the Contractor's failure to perform specification requirements as a result of any date-related data Year 2000 issues.

7.5.2 Additionally, notwithstanding any other warranty or disclaimer of warranty in this Contract, the Contractor warrants that each hardware, software, and firmware product delivered under this Contract shall be able to accurately process date/time data (including but not limited to calculation, comparing, and sequencing) from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000 and leap year calculations, to the extent that other information technology utilized by the State in combination with the information technology being acquired under this Contract properly exchanges date-time data with it. If this Contract requires that the information technology products being acquired perform as a system, or that the information technology products being acquired



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perform as a system in combination with other State information technology, then this warranty shall apply to the acquired products as a system. The remedies available to the State for breach of this warranty shall include, but shall not be limited to, repair and replacement of the information technology products delivered under this Contract. In addition, the defense of *force majeure* shall not apply to the failure of the Contractor to perform any specification requirements as a result of any date-related data Year 2000 issues.

- 7.6 Compliance With Applicable Laws. The materials and services supplied under this Contract shall comply with all applicable Federal, state and local laws, and the Contractor shall maintain all applicable license and permit requirements.
- 7.7 Survival of Rights and Obligations after Contract Expiration or Termination.
- 7.71 Contractor's Representations and Warranties. All representations and warranties made by the Contractor under this Contract shall survive the expiration or termination hereof. In addition, the parties hereto acknowledge that pursuant to A.R.S. § 12-510, except as provided in A.R.S. § 12-529, the State is not subject to or barred by any limitations of actions prescribed in A.R.S., Title 12, Chapter 5.
- 7.7.2 Purchase Orders. The Contractor shall, in accordance with all terms and conditions of the Contract, fully perform and shall be obligated to comply with all purchase orders received by the Contractor prior to the expiration or termination hereof, unless otherwise directed in writing by the Procurement Officer, including, without limitation, all purchase orders received prior to but not fully performed and satisfied at the expiration or termination of this Contract.

8. State's Contractual Remedies

- 8.1 Right to Assurance. If the State in good faith has reason to believe that the Contractor does not intend to, or is unable to perform or continue performing under this Contract, the Procurement Officer may demand in writing that the Contractor give a written assurance of intent to perform. Failure by the Contractor to provide written assurance within the number of Days specified in the demand may, at the State's option, be the basis for terminating the Contract under the Uniform Terms and Conditions or other rights and remedies available by law or provided by the contract.
- 8.2 Stop Work Order.
- 8.2.1 The State may, at any time, by written order to the Contractor, require the Contractor to stop all or any part, of the work called for by this Contract for period(s) of days indicated by the State after the order is delivered to the Contractor. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.
- 8.2.2 If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the Contractor shall resume work. The Procurement Officer shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.
- 8.3 Non-exclusive Remedies. The rights and the remedies of the State under this Contract are not exclusive.
- 8.4 Nonconforming Tender. Materials or services supplied under this Contract shall fully comply with the Contract. The delivery of materials or services or a portion of the materials or services that do not fully comply constitutes a breach of contract. On delivery of nonconforming materials or services, the State may terminate the Contract for default under applicable termination clauses in the Contract, exercise any of its rights and remedies under the Uniform Commercial Code, or pursue any other right or remedy available to it.
- 8.5 Right of Offset. The State shall be entitled to offset against any sums due the Contractor, any expenses or costs incurred by the State, or damages assessed by the State concerning the Contractor's non-conforming performance or failure to perform the Contract, including expenses, costs and damages described in the Uniform Terms and Conditions.

9. Contract Termination

- 9.1 Cancellation for Conflict of Interest. Pursuant to A.R.S. § 38-511, the State may cancel this Contract within three (3) years after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the State is or becomes at any time while the Contract or an extension of the Contract is in effect an employee of or a consultant to any other party to this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when the Contractor receives written notice of the cancellation unless the notice specifies a later time. If the Contractor is a political subdivision of the State, it may also cancel this Contract as provided in A.R.S. § 38-511.
- 9.2 Gratuities. The State may, by written notice, terminate this Contract, in whole or in part, if the State determines that employment or a Gratuity was offered or made by the Contractor or a representative of the Contractor to any officer or employee of the State for the purpose of influencing the outcome of the procurement or securing the Contract, an amendment to the Contract, or favorable treatment concerning the Contract, including the making of any determination or decision about contract performance. The State, in addition to



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any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by the Contractor.

- 9.3 Suspension or Debarment. The State may, by written notice to the Contractor, immediately terminate this Contract if the State determines that the Contractor has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract shall attest that the contractor is not currently suspended or debarred. If the contractor becomes suspended or debarred, the contractor shall immediately notify the State.
- 9.4 Termination for Convenience. The State reserves the right to terminate the Contract, in whole or in part at any time, when in the best interests of the State without penalty or recourse. Upon receipt of the written notice, the Contractor shall stop all work, as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to the State. In the event of termination under this paragraph, all documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State upon demand. The Contractor shall be entitled to receive just and equitable compensation for work in progress, work completed and materials accepted before the effective date of the termination. The cost principles and procedures provided in A.A.C. R2-7-701 shall apply.
- 9.5 Termination for Default.
- 9.5.1 In addition to the rights reserved in the contract, the State may terminate the Contract in whole or in part due to the failure of the Contractor to comply with any term or condition of the Contract, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Contract. The Procurement Officer shall provide written notice of the termination and the reasons for it to the Contractor.
- 9.5.2 Upon termination under this paragraph, all goods, materials, documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State on demand.
- 9.5.3 The State may, upon termination of this Contract, procure, on terms and in the manner that it deems appropriate, materials or services to replace those under this Contract. The Contractor shall be liable to the State for any excess costs incurred by the State in procuring materials or services in substitution for those due from the Contractor.
- 9.6 Continuation of Performance Through Termination. The Contractor shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.
10. **Contract Claims.** All contract claims or controversies under this Contract shall be resolved according to A.R.S. Title 41, Chapter 23, Article 9, and rules adopted thereunder.
11. **Arbitration**
- The parties to this Contract agree to resolve all disputes arising out of or relating to this contract through arbitration, after exhausting applicable administrative review, to the extent required by A.R.S. § 12-1518, except as may be required by other applicable statutes (Title 41).



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Eligible Agencies (Statewide):

This contract shall be for the use of all State of Arizona departments, agencies and boards. In addition, eligible universities, political subdivisions and nonprofit educational or public health institutions may participate at their discretion. In order to participate in this contract, a university, political subdivision, or nonprofit educational or public health institution must have entered into a cooperative purchasing agreement with the State Procurement Office as required by Arizona Revised Statutes 41-2642.

Contract Type (Term):

Firm fixed price term, indefinite quantity.

Term of Contract (One Year)

This contract shall commence upon award or as specified in the award documents and shall remain in effect for one year unless terminated, canceled, or extended as otherwise provided herein.

Contract Extension (Months)

By mutual written contract amendment, this contract may be extended for supplemental periods of up to a maximum of 48 months.

Estimated Quantities

This contract references quantities as a general indication of the needs of the state. However, the quantities shown are estimates only and the state reserves the right to increase or decrease any quantities actually acquired. No commitment of any kind is made concerning quantities. Each potential contractor should take this fact into consideration.

Non-Exclusive Contract

This contract is awarded with the understanding and agreement that it is for the sole convenience of the State of Arizona. The state reserves the right to obtain like goods or services from another source when necessary. Off-contract purchase authorization (SPO form 150) may only be approved by the State Procurement Administrator. Approval shall be at the exclusive discretion of the State Procurement Administrator and shall be final. However, approval shall be granted only after a proper review and when deemed to be appropriate. Off-contract procurement shall be consistent with the Arizona Procurement Code.

Post Consumer Recycled Content:

In support of the Arizona Recycling Program, the State has chosen to emphasize the post consumer content of the recycled products that are bid for statewide contracts. The EPA definition of post consumer will be adhered to. Items must contain a minimum of 10% post consumer material.

Inventory

The State of Arizona has an ongoing requirement for the products indicated in this contract. It is an express condition that the contractor shall maintain a reasonable stock on hand for delivery to the requesting agency. Failure to maintain such a stock may result in contract cancellation.

Current Products

All products offered in this contract shall be in current and ongoing production; shall have been formally announced for general marketing purposes; shall be a model or type currently functioning in a user (paying customer) environment and capable of meeting or exceeding all specifications and requirements set forth in this contract.

Ordering Process

Upon award of a contract by the State Procurement Office, any designated agency may procure the specific material and/or service awarded by the issuance of a contract release order/purchase order to the appropriate contractor. Each contract release order/purchase order must cite the correct Arizona contract number. The award of a contract shall be in accordance with the Arizona Procurement Code and all transactions and procedures required by the code for public bidding have been complied with. A contract release order/purchase order for the awarded material and/or service that cites the correct Arizona contract number is the only document required for the agency to order and the contractor to deliver the material and /or service.



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Any attempt to represent any material and/or service not specifically awarded as being under contract with the State of Arizona is a violation of the contract and the Arizona Procurement Code. Any such action is subject to the legal and contractual remedies available to the state inclusive of, but not limited to, contract cancellation, suspension and/or debarment of the contractor.

Credit/State of Arizona Purchasing Card Ordering

Any authorized agency may procure the specific material and/or service awarded by utilizing the card as a method of ordering/payment with the awarded contractor. The awarded contractor shall be responsible for ensuring compliance to all contract requirements (including contract pricing) for all credit/purchase card transactions made against any resultant contract(s).

Optional Discount Rates

The contractor(s) shall be responsible for disclosing and honoring all applicable discount rates contained herein (i.e. Purchasing Card, Electronic Ordering Systems, Quantity Purchase, Special Educational and Prompt Payment discounts) to effected agencies/political subdivisions. Disclosure shall be made during all verbal and written communications order conformations and on invoicing activities made under the resultant contract(s). Failure to disclose and include all applicable discount rates to contracted customers may result in contract cancellation.

Telephone Ordering Support

Contractor(s) shall accept collect telephone calls and/or provide and maintain a toll-free number for the state's procurement usage. The telephones number(s) are available on Attachment C included with this contract. Failure to maintain this service may be cause for cancellation of the contract.

Pricing

All pricing shall be firm, fixed and be inclusive of all labor, equipment, materials, products, freight (FOB Destination), insurance, and all other costs incidental to the products bid (excluding applicable state and local taxes).

Contractor(s) are obligated to honor their price quotes for dispensers, credit for returned pallets, and inside delivery charge in Attachment E. These optional prices will be used as needed, when needed by the state. Also, the state may or may not elect to purchase these options.

Taxes Not Included in Price

Prices offered shall not include applicable state and local taxes. The state will pay all applicable taxes. Taxes must be listed as a separate item on all invoices.

Minimum Order

The minimum dollar value of orders to be issued under this contract is \$100.00. For shipments less than the established minimum, transportation charges may be added as a separate item on the invoice except at no time shall the freight charges exceed the amount normally charged for shipments from the nearest trade area.

Order Quantities

Orders are to be made in case lots only.

Delivery (Days)

All deliveries shall be made within 14 days of receipt of a contract release order/purchase order.

Shipping F.O.B. Statewide

Prices shall be F.O.B. Destination to any delivery location in the State of Arizona, delivered to the specified receiving point as required by the customer agency at the time of order. Contractor shall retain title and control of all goods until they are delivered, received and contract of coverage has been completed. All risk of transportation and all related charges shall be the responsibility of the contractor. All claims for visible and concealed damage shall be filed by the contractor. The State will notify the contractor promptly of any damaged goods and shall assist the contractor in arranging for inspection.

Packaging (Recovered Materials)

Contractors are encouraged to offer products packaged in containers using recovered materials suitable for the intended use. "Recovered



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Materials" is defined as post-consumer waste (any products generated by a business or consumer which have served their intended end use, and which have been separated or diverted from solid waste for the purpose of collection, recycling and disposition).

Packing Slip

Each shipment shall include a packing slip showing the contract number and the quantity shipped . Packing Slip shall also show the invoice number and the contract release order/ purchase order number.

Defective Products

All defective products shall be replaced and exchanged by the contractor. The cost of transportation, unpacking, inspection, repacking, reshipping or other like expenses shall be paid by the vendor. All replacement products must be received by the state within seven (7) days of initial notification.

Return Policy (For reasons other than Fault or Error of the Contractor)

In the event ordered and delivered items are returned to the contractor due solely to a management decision by the ordering agency and not due to any fault or error by the contractor, the contractor shall be entitled to payment for restocking at 10% of the invoiced cost of the returned items plus the cost of transportation from the contractor to the ordering agency. The transportation charges shall not exceed the least expensive rate by common carrier for the category and weight of the items returned. In addition, the freight cost for the return of the items plus any cost necessary to insure receipt of the returned items by the contractor shall be paid by the ordering agency. Items returned under this provision must be shipped back to the contractor by the ordering agency not later than 30 calendar days after initial receipt of the items from the contractor and must be returned unused in the original packaging including any instruction manuals or other material accompanying the initial shipment

Billing

All billing notices shall include delivery time, and contractual payment terms. Items are to be identified by the name, model number, contract number, line item number, and serial number if applicable. Any contract release order/purchase order issued by the requesting agency shall refer to the contract number and line item number(s).

Payment

The contractor shall submit to the issuing agency, after delivery of the products listed by the issuing agency's contract release order/purchase order, an invoice in conformance with the pricing schedule of this contract. The issuing agency shall process the invoice for prompt payment in accordance with the standard operating procedures of the state.

Price Adjustment (After 180 Days)

Prices offered by contractor(s) shall remain firm for a period of at least 180 days from the effective date of contract. Upon completion of this initial period, if a contractor has received an increase in prices from the manufacturer/mill, the contractor may request, in writing, an increase in prices to the State Procurement Office. A certified letter from the manufacturer/mill showing price increases must accompany the request. Price increases shall not exceed manufacturer/mill price increases. Any increased prices must remain firm for 180 days.

The contractor should submit any proposed price increase request 30 days in advance of any price change for proper consideration. Failure to submit such price increase within this established timeframe may result in such request being denied.

The State Procurement Office shall determine whether the requested price increase or an alternate option, is in the best interest of the State. Approval shall be the sole discretion of the State and shall be incorporated only by issuance of a contract amendment document (citing approved price increase and the effective date thereof).

Price Reductions

Price reductions may be submitted to the state for consideration at any time during the contract period. The contractor shall offer the state a price reduction on the contract product(s) concurrent with a published price reduction made by the manufacturer to other customers. The state at its own discretion may accept a price reduction. The contractor shall request, in writing, a price reduction and provide the following:

1. A formal announcement from the manufacturer that the cost of the contract product has been reduced.



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- Documentation, i.e., published cost lists, from the manufacturer showing, to the satisfaction of the state, the actual cost reduction.
- Documentation showing that the published cost reductions have been offered to other distributors.

Product Discontinuance (Categories)

In the event that a product or model is discontinued by the manufacturer, the state at its sole discretion may allow the contractor to provide a substitute for the discontinued item. The contractor shall request permission to substitute a new product or model and provide the following:

- A formal announcement from the manufacturer that the product or model has been discontinued.
- Documentation from the manufacturer that names the replacement product or model.
- Documentation that provides clear and convincing evidence that the replacement meets or exceeds all specifications required and remains within the same category defined by the original solicitation.
- Documentation that provides clear and convincing evidence that the replacement will be compatible with all the functions or uses of the discontinued product or model.
- Documentation confirming that the price for the replacement is the same as or less than the discontinued model.
- As applicable, if a sample is requested, notification will be given whether the sample is acceptable, or is rejected, a reason shall be given.

Cancellation

The state reserves the right to cancel the whole or any part of this contract due to failure of the contractor to carry out any obligation, term, or condition of the contract. The state will issue a written notice to the contractor for acting or failing to act as in any of the following:

The contractor provides personnel that do not meet the requirements of the contract.

The contractor fails to perform adequately the services required in the contract.

The contractor attempts to impose on the state, personnel which are of an unacceptable quality.

The contractor fails to furnish the required product within the time stipulated in the contract.

The contractor fails to make progress in the performance of the requirements of the contract and/or gives the state a positive indication that the contractor will not or cannot perform to the requirements of the contract.

If the contractor does not correct the above problem(s) within ten (10) days after receiving the notice of default, the state may cancel the contract. If the state cancels the contract pursuant to this clause, the state reserves all rights or claims to damage for breach of contract.

Contract Default

- The state, by written notice of default to the contractor, may terminate the whole or any part of this contract in any one of the following circumstances:
 - If the contractor fails to make delivery of the supplies or to perform the services within the time specified; or
 - If the contractor fails to perform any of the other provisions of this contract; and fails to remedy the situations within a period of ten (10) days after receipt of notice.



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B. In the event the state terminates this contract in whole or part, the state may procure supplies or services similar to those terminated, and the contractor shall be liable to the state for any excess costs for such similar supplies or services.

Licenses

Contractor shall maintain in current status all federal, state and local licenses and permits required for the operation of the business conducted by the contractor.

Contraband

Any person who takes into or out of, or attempts to take into or out of a correctional facility or the grounds belonging to adjacent to a correctional facility, any item not specifically authorized by the correctional facility shall be prosecuted under the provisions of the Arizona Revised Statutes. All persons, including employees and visitors, entering upon these confines are subject to routine searches of their person, vehicles, property of packages.

DEFINITION - A.R.S. § 13-2501

Contraband means any dangerous drug, narcotic drug, intoxication liquor of any kind, deadly weapon, dangerous instrument, explosive or any other article whose use or possession would endanger the safety, security, or preservation of order in a correctional institution or any person therein. (Any other article includes any substance which could cause abnormal behavior, i.e. marijuana, non-prescription medication, etc.)

PROMOTING PRISON CONTRABAND - A.R.S. § 13-2505

1. A person, not otherwise authorized by law, commits promoting prison contraband:
 - A. By knowingly taking contraband into a correctional facility or the grounds of such a facility; or
 - B. By knowingly conveying contraband to any person confined in a correctional facility; or
 - C. By knowingly making, obtaining or possessing contraband while being confined in a correctional facility.
2. Promoting prison contraband is a Class 5 felony.

Insurance

A. Without limiting any liabilities or any other obligation of the Contractor, the Contractor shall purchase and maintain, in a company or companies lawfully authorized to do business in the State of Arizona, and rated at least "A VII" in the current A.M. Best's, the minimum insurance coverage below:

1. Commercial General Liability, with minimum limits of \$1,000,000.00 per occurrence, and an unimpaired products and completed operations aggregate limit and general aggregate minimum limit of \$2,000,000.00. Coverage shall be at least as broad as the Insurance Service Office, Inc. Form CG00010196, issued on an Occurrence basis, and endorsed to add the State of Arizona as an Additional Insured with reference to this contract. The policy shall include coverage for:

Bodily Injury;

Broad Form Property Damage (including completed operations);

Personal Injury;

Blanket Contractual Liability;

Products and Completed Operations, and this coverage shall extend for one year past acceptance, cancellation or termination of the services or work defined in this contract;

Fire Legal Liability.

2. Business Automobile Liability, with minimum limits of \$1,000,000.00 per occurrence combined single limit, with Insurance Service Office, Inc. Declarations to include Symbol One (Any Auto) applicable to claims arising from bodily injury, death or property damage arising out of



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the ownership, maintenance or use of any auto. The policy shall be endorsed to add the State of Arizona as an Additional Insured with reference to this contract.

3. Worker's Compensation (Coverage A): Statutory Arizona benefits;
Employer's Liability (Coverage B): \$500,000.00 each accident;
\$500,000.00 each employee/disease;
\$1,000,000.00 policy limit/disease.

Policy Shall Include endorsement for All State coverage for state of hire.

4. Professional Liability Insurance with minimum limits of \$1,000,000.00 Each Claim (or Each Wrongful Act) with a Retroactive Liability Date (if applicable to Claims-Made coverage) the same as the effective date of this contract. The policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Work or Specifications of this contract and, at the discretion of the State of Arizona, shall include one of the following types of Professional Liability policies:

Directors and Officers;
Errors and Omissions;
Medical Malpractice;
Druggists Professional;
Architects/Engineers Professional;
Lawyers Professional;
Teachers Professional;
Accountants Professional;
Social Workers Professional.

The State of Arizona shall be named as an Additional Insured as its interests may appear.

The policy shall contain an Extended Claim Reporting Provision of not less than one year following termination of the policy.

B. The State of Arizona reserves the right to request and receive certified copies of all policies and endorsements within ten calendar days of contract signature.

C. Certificates of Insurance acceptable to the State of Arizona shall be issued and delivered prior to the commencement of the work defined in this contract, and shall identify the contract number and include certified copies of endorsements naming the State of Arizona as Additional Insured for liability coverages. The certificates, insurance policies and endorsements required by this paragraph shall contain a provision that coverages afforded will not be canceled until at least 50 days prior written notice has been given to the State of Arizona. All coverages, conditions, limits and endorsements shall remain in full force and effect as required in this contract.

D. Failure on the part of the Contractor to meet these requirements shall constitute a material breach of contract, upon which the State of Arizona may immediately terminate this agreement or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, and all monies so paid by the State of Arizona shall be repaid by the Contractor upon demand, or the State of Arizona may offset the cost of the premiums against any monies due to the contractor. Costs for coverages broader than those required or for limits in excess of those required shall not be charged to the State of Arizona. Contractor and its insurer(s) providing the required coverages shall waive their rights of recovery against the State of Arizona, its Departments, Employees and Officers, Agencies, Boards and Commissions.

Safety Standards

All items supplied on this contract must comply with the current applicable occupational safety and health standards of the State of Arizona Industrial Commission, The National Electric Code, and The National Fire Protection Association Standards, American National Standards Institute and American Society for Testing and Materials (ASTM).

State Contract Show Availability

As a statewide contractor, the contractor is eligible to participate in an exhibition of products and services for the state agency and eligible



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political subdivision personnel in a centralized event. The show has been in place since 1984 and regularly attracts over 200 booths and 600 state contract users.

Usage Reports (reporting/submission requirements):

The contractor shall be required to furnish contract usage report(s) during the entire term of the resultant contract(s). Usage reports shall delineate all acquisition activities governed by the contract. The information contained in these reports and the accurate and timely submission thereof are critical components used by the state to determine actual contract usage by individual state agencies and political subdivision contract customers. The format of these reports shall be based on Solicitation Exhibits A and B and shall be supplied at no additional cost to the state. Contractors are encouraged to submit usage reports in electronic format (i.e. compact disc, diskettes).

All usage report required under this contract shall be due at the end of each twelve-month contract period. Failure by a contractor to submit accurate and timely usage reports against this contract may result in contract cancellation and possible determination(s) by the state as a non-responsible bidder concerning future solicitations.



Specifications

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PAPER: TOILET, TOWEL, NAPKIN & FACIAL TISSUES

SPECIFICATIONS

1. All paper products in this contract are divided into two categories consisting of Mill Paper Products and Converted/Repackaged Paper Products as defined below:

A. **Mill Paper Products** are paper products whose logos and trade names are given to distinguish it as produced by a manufacturer/mill and is protected by the manufacturer/mill's registered trademark.

The following are State-recognized manufacturers/mills and samples of their trade names:

Bay West (EcoSoft, Dublsoft and Sirrus);

Georgia-Pacific (Envision Acclaim, Preference, and Dixie);

Kimberly Clark (Kleenex, Scott, and Tradition);

Marcal Paper (Surprise, Bella, Fluff-out, Polycase);

Procter and Gamble (Bounty and Charmin);

SCA Tissue (Park Avenue, Coronet, Main Street, Second Nature, and Encore/Ovation).

B. **Converted/Repackaged Paper Products** are produced by companies that are primarily in the business of converting and repackaging paper products. Converters/Repackagers are companies that buys paper rolls from paper manufacturers/mills, cuts, and packages them into finished products. The source of paper being traceable to a mill is not a requirement in this category.

The following are examples of Converted/Repackaged products:

Advantage;

Carolina Paper Converter;

Cellynne;

Excell;

FDS;

Health Gards;

Omni;

Seventh Generation; etc.

2. All products shall dispense properly from the correct fixture when loaded according to directions.
3. Toilet tissue shall be unglazed.
4. All products shall have no disagreeable odor, either wet or dry.
5. Edges of all products shall be cleanly cut and not ragged. Products shall not contain holes, tears, wrinkles, foreign materials or dust.
6. Towels shall be folded or rolled as specified. Folded towels shall be stacked evenly and banded.
7. Towels and tissues shall be packed in shipping containers of the type, size, and kind commonly used for that purpose and in a manner that will ensure acceptance by common carrier and safe delivery to the point of destination.
8. All products should be compatible for use in standard types of tissue dispensers currently in use by eligible agencies.
9. Palletizing:
At no extra cost, the state may request palletized deliveries for orders of 10 cartons or more. If palletized shipments are requested, it shall conform to the following:
 - Palletized on a single-face hardwood pallet, in good condition, with three (3), 2" x 4" runners lengthwise the pallet
 - Deck boards to be 3/4" minimum thickness with 1 1/2" maximum spacing



Specifications

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- Length: 44" minimum- 48" maximum Width: 36" minimum-48" maximum
- Height: 5'7" including pallet
- Weight: 4,000 maximum gross pounds

Pallets are to be securely banded or shrink-wrapped and loads shall not exceed the size of the pallet. Pallets should be returnable for Credit (see Attachment E, Optional Price Section).

10. At the option of the state, an agency may request inside delivery to a specific location (see Attachment E, Optional Price Section). Inside Delivery shall be defined as delivery of the product inside a specific office, business, or building.
11. In support of the Arizona Recycling Program, the State has chosen to emphasize the post consumer content of the recycled products that are bid for statewide contracts. The EPA definition of post consumer will be adhered to. Items must contain a minimum of 10% post consumer material.



Price Sheet

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For the goods and/or services specified herein, the following apply:

- Prompt Payment Discount: If payment is made within _____ calendar days after acceptance of goods and/or services, the above quoted price, excluding sales tax, shall be discounted by _____ %. This discount shall be applied to all Agency purchase transactions, excluding those initialized utilizing a credit or "Purchasing" card.
- Notice: The State will assume that the price(s) offered do not include any applicable transaction privilege (sales) taxes. If the products and/or services specified require transaction privilege (sales) taxes, they are to be described and itemized separately on the Offer.
- Sales Tax Percent: _____%. (See Uniform Instructions to Offerors, paragraph 3.J.)

LINE NO.	COMMODITY DESCRIPTION
20	Tissue, Toilet, Roll, One-Ply, Perforated, White; Approximately 1000 Sheets Per Roll; Sheet Size: 4.5" x 4.5" Manufacturer/Mill: Georgia Pacific Brand Name: Envision Product/SKU No. 15590 Recycled: Yes Price Per Case: \$28.27 Number of Rolls Per Case: 96
30	Tissue, Toilet, Roll, Two-Ply, Perforated, White; Approximately 500 Sheets Per Roll; Sheet Size: 4.5" x 4.5" Manufacturer/Mill: George Pacific Brand Name: Envision Product/SKU No. 15590 Recycled: Yes Price Per Case: \$23.98 Number of Rolls Per Case: 96
100	Towel, Paper, Multi-Fold, White, Approximately 250 Sheets Per Package; Sheet Size: 9.25" x 9.5" Manufacturer/Mill: Georgia Pacific Brand Name: Acclaim Product/SKU No. 20205 Recycled: Yes Price Per Case: \$11.89 Number of Packages Per Case: 16



Price Sheet

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Towel, Paper, Roll, Natural, Non-Perforated; Size: 7.87" x 350 Feet Per Roll;
Manufacturer/Mill: Georgia Pacific
Brand Name: Acclaim
Product/SKU No. 26401
Recycled: Yes
Price Per Case: \$10.75
Number of Rolls Per Case: 12

160

Towel, Paper, Roll, White, Non-Perforated; One-Ply; Size: 7.87" x 800 Feet Per Roll;
Manufacturer/Mill: Georgia Pacific
Brand Name: Acclaim
Product/SKU No. 28891
Recycled: Yes
Price Per Case: \$14.19
Number of Rolls Per Case: 12

170

Towel, Paper, Household Roll, Perforated, Two-Ply; 85 Sheets Per Roll; Sheet Size: 11" x 8.8"
Manufacturer/Mill: Georgia Pacific
Brand Name: Preference
Product/SKU No 27385
Recycled: Yes
Price Per Case: \$12.49
Number of Rolls Per Case: 30

CONVERTED/REPACKAGED PAPER PRODUCT CATEGORY

LINE NO.

COMMODITY DESCRIPTION

320

Tissue, Toilet, Roll, One-Ply, Perforated, White; 1000 Sheets Per Roll; Sheet Size: 4.5" x 4.5"
Converter/Repackager: NIBROC
Brand Name: NIBROC
Product/SKU No. 11012
Recycled: Yes
Price Per Case: \$28.88
Number of Rolls Per Case: 96



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Tissue, Toilet, Roll, Two-Ply, Perforated; White; 500 Sheets Per Roll; Sheet Size: 4.5" x 4.5"
Converter/Repackager: NIBROC
Brand Name: NIBROC
Product/SKU No. 11808
Recycled: Yes
Price Per Case: \$24.65
Number of Rolls Per Case: 96

370

Towel, Paper, Single-Fold, Natural, 250 Sheets Per Package; Sheet Size: 9.5" x 10.62
Converter/Repackager: NIBROC
Brand Name: NIBROC
Product/SKU No. 22501
Recycled: Yes
Price Per Case: \$10.60
Number of Packages Per Case: 16

390

Towel, Paper, Multi-Fold, Natural, 250 Sheets Per Package; Sheet Size: 9.5" x 9.25"
Converter/Repackager: NIBROC
Brand Name: NIBROC
Product/SKU No. 25010
Recycled: Yes
Price Per Case: \$10.69
Number of Packages Per Case: 16

400

Towel, Paper, Multi-Fold, White, 250 Sheets Per Package; Sheet Size: 9.5" x 9.25"
Converter/Repackager: NIBROC
Brand Name: NIBROC
Product/SKU No. 22215
Recycled: Yes
Price Per Case: \$11.78
Number of Packages Per Case: 16



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Towel, Paper, Roll, Natural, Non-Perforated; Size: 7.87" x 350 Feet per Roll;
Converter/Repackager: NIBROC
Brand Name: NIBROC
Product/SKU No. 25054
Recycled: Yes
Price Per Case: \$11.64
Number of Rolls Per Case: 12

440

Towel, Paper, Roll, White, Non-Perforated; Size: 7.87" x 350 Ft. Roll;
Converter/Repackager: NIBROC
Brand Name: NIBROC
Product/SKU No. 25053
Recycled: Yes
Price Per Case: \$13.38
Number of Rolls Per Case: 12

460

Towel, Paper, Roll, White, Non-Perforated, One-Ply; Size: 7.87" x 800 Feet Per Roll;
Converter/Repackager: NIBROC
Brand Name: NIBROC
Product/SKU No. 25052
Recycled: Yes
Price Per Case: \$15.56
Number of Rolls Per Case: 12

470

Towel, Paper, Household Roll, Perforated, Two-Ply; 85 sheets Per Roll; Sheet Size: 8.8" x 11"
Converter/Repackager: NIBROC
Brand Name: NIBROC
Product/SKU No. 24310
Recycled: Yes
Price Per Case: \$12.99
Number of Rolls Per Case: 30



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Napkin, Table, Paper, One-Ply, White, 1/4-Fold; 500 Sheets Per Package; Sheet Size: 12" x 13"

Converter/Repackager: NIBROC

Brand Name: NIBROC

Product/SKU No. 35624

Recycled: Yes

Price Per Case: \$22.45

Number of Packages Per Case: 12

490

Tissue, Facial, White, Two-Ply; 100 Sheets Per Package; Sheet Size: 8" x 8.33"

Converter/Repackager: NIBROC

Brand Name: NIBROC

Product/SKU No. 47112

Recycled: Yes

Price Per Case: \$9.87

Number of Packages Per Case: 30



Attachment

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ATTACHMENT C TELEPHONE ORDERING SUPPORT

All contractors shall accept collect telephone calls and/or provide and maintain a toll-free number and or have local phone numbers (Phoenix Metro) for the state's procurement usage. Failure to maintain these services may be cause for cancellation of the contract.

Local phone number: 602-269-5053

Toll-Free Number: 800-752-1938

Facsimile Number: 602-269-8289

ATTACHMENT E PRICE SECTION (OPTIONAL)

OPTIONAL CREDIT FOR RETURNED PALLETS (If requested by Agency)
(See Specifications Item NO. 9)

\$N/A Pallet

OPTIONAL CHARGES FOR INSIDE DELIVERY (If requested by Agency) **Inside Delivery outside of Metro Phoenix, Tucson, Flagstaff, Prescott, Wickenburg Sedona & Nogales)**

\$30.00/Pallet

End of Contract AD030015-001 Document



Contract Summary

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VENDOR: MAT Industries

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CONTRACT NUMBER: AD030015 - 003

CONTRACT TITLE: Paper: Toilet, Towel, Napkin, & Facial Tissues

CONTRACT TYPE: Statewide Contract

CONTRACT PERIOD: July 01, 2003

THRU: June 30, 2004

CONTRACTOR: MAT Industries

CONTACT NAME : Mark Tiras

ADDRESS: 6339 E Greenway

Suite 102-103

Scottsdale, AZ 85254 6517

TELEPHONE: 480 607-2930

FAX NUMBER: 480 609-7461

CONTRACTING AUTHORITY: State Procurement Office

CONTACT NAME: Elmer Garcia

TELEPHONE: 602 542-9126

F.O.B. TERMS: FOB Delivered

DELIVERY: 14 Days ARO

PAYMENT TERMS: Net 30 Days



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VENDOR: MAT Industries

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Version 7

1. **Definition of Terms.** As used in this Solicitation and any resulting Contract, the terms listed below are defined as follows:
 - 1.1 "Attachment" means any item the Solicitation requires the Offeror to submit as part of the Offer.
 - 1.2 "Contract" means the combination of the Solicitation, including the Uniform and Special Instructions to Offerors, the Uniform and Special Terms and Conditions, and the Specifications and Statement or Scope of Work; the Offer and any Best and Final Offers; and any Solicitation Amendments or Contract Amendments.
 - 1.3 "Contract Amendment" means a written document signed by the Procurement Officer that is issued for the purpose of making changes in the Contract.
 - 1.4 "Contractor" means any person who has a Contract with the State.
 - 1.5 "Days" means calendar days unless otherwise specified.
 - 1.6 "Exhibit" means any item labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the Solicitation.
 - 1.7 "Gratuity" means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.
 - 1.8 "Materials" means all property, including equipment, supplies, printing, insurance and leases of property but does not include land, a permanent interest in land or real property or leasing space.
 - 1.9 "Procurement Officer" means the person, or his or her designee, duly authorized by the State to enter into and administer Contracts and make written determinations with respect to the Contract.
 - 1.10 "Services" means the furnishing of labor, time or effort by a contractor or subcontractor which does not involve the delivery of a specific end product other than required reports and performance, but does not include employment agreements or collective bargaining agreements.
 - 1.11 "Subcontract" means any Contract, express or implied, between the Contractor and another party or between a subcontractor and another party delegating or assigning, in whole or in part, the making or furnishing of any material or any service required for the performance of the Contract.
 - 1.12 "State" means the State of Arizona and Department or Agency of the State that executes the Contract.
 - 1.13 "State Fiscal Year" means the period beginning with July 1 and ending June 30,
2. **Contract Interpretation**
 - 2.1 Arizona Law. The Arizona law applies to this Contract including, where applicable, the Uniform Commercial Code as adopted by the State of Arizona and the Arizona Procurement Code, Arizona Revised Statutes (A.R.S.) Title 41, Chapter 23, and its implementing rules, Arizona Administrative Code (A.A.C.) Title 2, Chapter 7.
 - 2.2 Implied Contract Terms. Each provision of law and any terms required by law to be in this Contract are a part of this Contract as if fully stated in it.
 - 2.3 Contract Order of Precedence. In the event of a conflict in the provisions of the Contract, as accepted by the State and as they may be amended, the following shall prevail in the order set forth below:
 - 2.3.1 Special Terms and Conditions;
 - 2.3.2 Uniform Terms and Conditions;
 - 2.3.3 Statement or Scope of Work;
 - 2.3.4 Specifications;
 - 2.3.5 Attachments;
 - 2.3.6 Exhibits;
 - 2.3.7 Documents referenced or included in the Solicitation.
 - 2.4 Relationship of Parties. The Contractor under this Contract is an independent Contractor. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.
 - 2.5 Severability. The provisions of this Contract are severable. Any term or condition deemed illegal or invalid shall not affect any other term or condition of the Contract.
 - 2.6 No Parole Evidence. This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.
 - 2.7 No Waiver. Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver



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of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.

3. Contract administration and operation.

- 3.1 Records. Under A.R.S. § 35-214 and § 35-215, the Contractor shall retain and shall contractually require each subcontractor to retain all data and other "records" relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract. All records shall be subject to inspection and audit by the State at reasonable times. Upon request, the Contractor shall produce a legible copy of any or all such records.
- 3.2 Non-Discrimination. The Contractor shall comply with State Executive Order No. 99-4 and all other applicable Federal and State laws, rules and regulations, including the Americans with Disabilities Act.
- 3.3 Audit. Pursuant to ARS § 35-214, at any time during the term of this Contract and five (5) years thereafter, the Contractor's or any subcontractor's books and records shall be subject to audit by the State and, where applicable, the Federal Government, to the extent that the books and records relate to the performance of the Contract or Subcontract.
- 3.4 Facilities Inspection and Materials Testing. The Contractor agrees to permit access to its facilities, subcontractor facilities and the Contractor's processes or services, at reasonable times for inspection of the facilities or materials covered under this Contract. The State shall also have the right to test, at its own cost, the materials to be supplied under this Contract. Neither inspection of the Contractor's facilities nor materials testing shall constitute final acceptance of the materials or services. If the State determines non-compliance of the materials, the Contractor shall be responsible for the payment of all costs incurred by the State for testing and inspection.
- 3.5 Notices. Notices to the Contractor required by this Contract shall be made by the State to the person indicated on the Offer and Acceptance form submitted by the Contractor unless otherwise stated in the Contract. Notices to the State required by the Contract shall be made by the Contractor to the Solicitation Contact Person indicated on the Solicitation cover sheet, unless otherwise stated in the Contract. An authorized Procurement Officer and an authorized Contractor representative may change their respective person to whom notice shall be given by written notice to the other and an amendment to the Contract shall not be necessary.
- 3.6 Advertising, Publishing and Promotion of Contract. The Contractor shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the Procurement Officer.
- 3.7 Property of the State. Any materials, including reports, computer programs and other deliverables, created under this Contract are the sole property of the State. The Contractor is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. The Contractor shall not use or release these materials without the prior written consent of the State.
- 3.8 Ownership of Intellectual Property
Any and all intellectual property, including but not limited to copyright, invention, trademark, tradename, service mark, and/or trade secrets created or conceived pursuant to or as a result of this contract and any related subcontract ("Intellectual Property"), shall be work made for hire and the State shall be considered the creator of such Intellectual Property. The agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract shall own (for and on behalf of the State) the entire right, title and interest to the Intellectual Property throughout the world. Contractor shall notify the State, within thirty (30) days, of the creation of any Intellectual Property by it or its subcontractor(s). Contractor, on behalf of itself and any subcontractor (s), agrees to execute any and all document(s) necessary to assure ownership of the Intellectual Property vests in the State and shall take no affirmative actions that might have the effect of vesting all or part of the Intellectual Property in any entity other than the State. The Intellectual Property shall not be disclosed by contractor or its subcontractor(s) to any entity not the State without the express written authorization of the agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract.

4. Costs and Payments

- 4.1 Payments. Payments shall comply with the requirements of A.R.S. Titles 35 and 41, Net 30 days. Upon receipt and acceptance of goods or services, the Contractor shall submit a complete and accurate invoice for payment from the State within thirty (30) days.
- 4.2 Delivery. Unless stated otherwise in the Contract, all prices shall be F.O.B. Destination and shall include all freight delivery and unloading at the destination.
- 4.3 Applicable Taxes.



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- 4.3.1 Payment of Taxes. The Contractor shall be responsible for paying all applicable taxes.
- 4.3.2 State and Local Transaction Privilege Taxes. The State of Arizona is subject to all applicable state and local transaction privilege taxes. Transaction privilege taxes apply to the sale and are the responsibility of the seller to remit. Failure to collect such taxes from the buyer does not relieve the seller from its obligation to remit taxes.
- 4.3.3 Tax Indemnification. Contractor and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall, and require all subcontractors to hold the State harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal, and/or state and local laws and regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.
- 4.3.4 IRS W9 Form. In order to receive payment the Contractor shall have a current I.R.S. W9 Form on file with the State of Arizona, unless not required by law.
- 4.4 Availability of Funds for the Next State fiscal year. Funds may not presently be available for performance under this Contract beyond the current state fiscal year. No legal liability on the part of the State for any payment may arise under this Contract beyond the current state fiscal year until funds are made available for performance of this Contract.
- 4.5 Availability of Funds for the current State fiscal year. Should the State Legislature enter back into session and reduce the appropriations or for any reason and these goods or services are not funded, the State may take any of the following actions:
- 4.5.1 Accept a decrease in price offered by the contractor;
- 4.5.2 Cancel the Contract
- 4.5.3 Cancel the contract and re-solicit the requirements.
- 5. Contract changes**
- 5.1 Amendments. This Contract is issued under the authority of the Procurement Officer who signed this Contract. The Contract may be modified only through a Contract Amendment within the scope of the Contract. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by the procurement officer in writing or made unilaterally by the Contractor are violations of the Contract and of applicable law. Such changes, including unauthorized written Contract Amendments shall be void and without effect, and the Contractor shall not be entitled to any claim under this Contract based on those changes.
- 5.2 Subcontracts. The Contractor shall not enter into any Subcontract under this Contract for the performance of this contract without the advance written approval of the Procurement Officer. The Contractor shall clearly list any proposed subcontractors and the subcontractor's proposed responsibilities. The Subcontract shall incorporate by reference the terms and conditions of this Contract.
- 5.3 Assignment and Delegation. The Contractor shall not assign any right nor delegate any duty under this Contract without the prior written approval of the Procurement Officer. The State shall not unreasonably withhold approval.
- 6. Risk and Liability**
- 6.1 Risk of Loss: The Contractor shall bear all loss of conforming material covered under this Contract until received by authorized personnel at the location designated in the purchase order or Contract. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with the Contractor regardless of receipt.
- 6.2 Indemnification
- 6.2.1 Contractor/Vendor Indemnification (Not Public Agency) The parties to this contract agree that the State of Arizona, its' departments, agencies, boards and commissions shall be indemnified and held harmless by the contractor for the vicarious liability of the State as a result of entering into this contract. However, the parties further agree that the State of Arizona, its' departments, agencies, boards and commissions shall be responsible for its' own negligence. Each party to this contract is responsible for its' own negligence.
- 6.2.2 Public Agency Language Only Each party (as 'indemnitor') agrees to indemnify, defend, and hold harmless the other party (as 'indemnitee') from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as 'claims') arising out of bodily injury of any person (including death) or property damage but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its' officers, officials, agents, employees, or volunteers."
- 6.3 Indemnification - Patent and Copyright. The Contractor shall indemnify and hold harmless the State against any liability, including costs and expenses, for infringement of any patent, trademark or copyright arising out of Contract performance or use by the State of materials furnished or work performed under this Contract. The State shall reasonably notify the Contractor of any claim for which it



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may be liable under this paragraph. If the contractor is insured pursuant to A.R.S. § 41-621 and § 35-154, this section shall not apply.

6.4 Force Majeure.

6.4.1 Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force majeure. The term "*force majeure*" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts; injunctions-intervention-acts; or failures or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.

6.4.2 Force Majeure shall not include the following occurrences:

6.4.2.1 Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market;

6.4.2.2 Late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition; or

6.4.2.3 Inability of either the Contractor or any subcontractor to acquire or maintain any required insurance, bonds, licenses or permits.

6.4.3 If either party is delayed at any time in the progress of the work by force majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practicable and no later than the following working day, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be delivered or mailed certified-return receipt and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by Contract Amendment for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Contract.

6.4.4 Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that such delay or failure is caused by force majeure.

6.5 Third Party Antitrust Violations. The Contractor assigns to the State any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to the Contractor, toward fulfillment of this Contract.

7. Warranties

7.1 Liens. The Contractor warrants that the materials supplied under this Contract are free of liens and shall remain free of liens.

7.2 Quality. Unless otherwise modified elsewhere in these terms and conditions, the Contractor warrants that, for one year after acceptance by the State of the materials, they shall be:

7.2.1 Of a quality to pass without objection in the trade under the Contract description;

7.2.2 Fit for the intended purposes for which the materials are used;

7.2.3 Within the variations permitted by the Contract and are of even kind, quantity, and quality within each unit and among all units;

7.2.4 Adequately contained, packaged and marked as the Contract may require; and

7.2.5 Conform to the written promises or affirmations of fact made by the Contractor.

7.3 Fitness. The Contractor warrants that any material supplied to the State shall fully conform to all requirements of the Contract and all representations of the Contractor, and shall be fit for all purposes and uses required by the Contract.

7.4 Inspection/Testing. The warranties set forth in subparagraphs 7.1 through 7.3 of this paragraph are not affected by inspection or testing of or payment for the materials by the State.

7.5 Year 2000.

7.5.1 Notwithstanding any other warranty or disclaimer of warranty in this Contract, the Contractor warrants that all products delivered and all services rendered under this Contract shall comply in all respects to performance and delivery requirements of the specifications and shall not be adversely affected by any date-related data Year 2000 issues. This warranty shall survive the expiration or termination of this Contract. In addition, the defense of *force majeure* shall not apply to the Contractor's failure to perform specification requirements as a result of any date-related data Year 2000 issues.

7.5.2 Additionally, notwithstanding any other warranty or disclaimer of warranty in this Contract, the Contractor warrants that each hardware, software, and firmware product delivered under this Contract shall be able to accurately process date/time data (including but not limited to calculation, comparing, and sequencing) from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000 and leap year calculations, to the extent that other information technology utilized by the State in combination with the information technology being acquired under this Contract properly exchanges date-time data with it. If this Contract requires that the information technology products being acquired perform as a system, or that the information technology products being acquired



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perform as a system in combination with other State information technology, then this warranty shall apply to the acquired products as a system. The remedies available to the State for breach of this warranty shall include, but shall not be limited to, repair and replacement of the information technology products delivered under this Contract. In addition, the defense of *force majeure* shall not apply to the failure of the Contractor to perform any specification requirements as a result of any date-related data Year 2000 issues.

- 7.6 Compliance With Applicable Laws. The materials and services supplied under this Contract shall comply with all applicable Federal, state and local laws, and the Contractor shall maintain all applicable license and permit requirements.
- 7.7 Survival of Rights and Obligations after Contract Expiration or Termination.
- 7.71 Contractor's Representations and Warranties. All representations and warranties made by the Contractor under this Contract shall survive the expiration or termination hereof. In addition, the parties hereto acknowledge that pursuant to A.R.S. § 12-510, except as provided in A.R.S. § 12-529, the State is not subject to or barred by any limitations of actions prescribed in A.R.S., Title 12, Chapter 5.
- 7.7.2 Purchase Orders. The Contractor shall, in accordance with all terms and conditions of the Contract, fully perform and shall be obligated to comply with all purchase orders received by the Contractor prior to the expiration or termination hereof, unless otherwise directed in writing by the Procurement Officer, including, without limitation, all purchase orders received prior to but not fully performed and satisfied at the expiration or termination of this Contract.
- 8. State's Contractual Remedies**
- 8.1 Right to Assurance. If the State in good faith has reason to believe that the Contractor does not intend to, or is unable to perform or continue performing under this Contract, the Procurement Officer may demand in writing that the Contractor give a written assurance of intent to perform. Failure by the Contractor to provide written assurance within the number of Days specified in the demand may, at the State's option, be the basis for terminating the Contract under the Uniform Terms and Conditions or other rights and remedies available by law or provided by the contract.
- 8.2 Stop Work Order.
- 8.2.1 The State may, at any time, by written order to the Contractor, require the Contractor to stop all or any part, of the work called for by this Contract for period(s) of days indicated by the State after the order is delivered to the Contractor. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.
- 8.2.2 If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the Contractor shall resume work. The Procurement Officer shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.
- 8.3 Non-exclusive Remedies. The rights and the remedies of the State under this Contract are not exclusive.
- 8.4 Nonconforming Tender. Materials or services supplied under this Contract shall fully comply with the Contract. The delivery of materials or services or a portion of the materials or services that do not fully comply constitutes a breach of contract. On delivery of nonconforming materials or services, the State may terminate the Contract for default under applicable termination clauses in the Contract, exercise any of its rights and remedies under the Uniform Commercial Code, or pursue any other right or remedy available to it.
- 8.5 Right of Offset. The State shall be entitled to offset against any sums due the Contractor, any expenses or costs incurred by the State, or damages assessed by the State concerning the Contractor's non-conforming performance or failure to perform the Contract, including expenses, costs and damages described in the Uniform Terms and Conditions.
- 9. Contract Termination**
- 9.1 Cancellation for Conflict of Interest. Pursuant to A.R.S. § 38-511, the State may cancel this Contract within three (3) years after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the State is or becomes at any time while the Contract or an extension of the Contract is in effect an employee of or a consultant to any other party to this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when the Contractor receives written notice of the cancellation unless the notice specifies a later time. If the Contractor is a political subdivision of the State, it may also cancel this Contract as provided in A.R.S. § 38-511.
- 9.2 Gratuities. The State may, by written notice, terminate this Contract, in whole or in part, if the State determines that employment or a Gratuity was offered or made by the Contractor or a representative of the Contractor to any officer or employee of the State for the purpose of influencing the outcome of the procurement or securing the Contract, an amendment to the Contract, or favorable treatment concerning the Contract, including the making of any determination or decision about contract performance. The State, in addition to



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any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by the Contractor.

- 9.3 Suspension or Debarment. The State may, by written notice to the Contractor, immediately terminate this Contract if the State determines that the Contractor has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract shall attest that the contractor is not currently suspended or debarred. If the contractor becomes suspended or debarred, the contractor shall immediately notify the State.
- 9.4 Termination for Convenience. The State reserves the right to terminate the Contract, in whole or in part at any time, when in the best interests of the State without penalty or recourse. Upon receipt of the written notice, the Contractor shall stop all work, as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to the State. In the event of termination under this paragraph, all documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State upon demand. The Contractor shall be entitled to receive just and equitable compensation for work in progress, work completed and materials accepted before the effective date of the termination. The cost principles and procedures provided in A.A.C. R2-7-701 shall apply.
- 9.5 Termination for Default.
- 9.5.1 In addition to the rights reserved in the contract, the State may terminate the Contract in whole or in part due to the failure of the Contractor to comply with any term or condition of the Contract, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Contract. The Procurement Officer shall provide written notice of the termination and the reasons for it to the Contractor.
- 9.5.2 Upon termination under this paragraph, all goods, materials, documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State on demand.
- 9.5.3 The State may, upon termination of this Contract, procure, on terms and in the manner that it deems appropriate, materials or services to replace those under this Contract. The Contractor shall be liable to the State for any excess costs incurred by the State in procuring materials or services in substitution for those due from the Contractor.
- 9.6 Continuation of Performance Through Termination. The Contractor shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.
10. **Contract Claims.** All contract claims or controversies under this Contract shall be resolved according to A.R.S. Title 41, Chapter 23, Article 9, and rules adopted thereunder.
11. **Arbitration**
- The parties to this Contract agree to resolve all disputes arising out of or relating to this contract through arbitration, after exhausting applicable administrative review, to the extent required by A.R.S. § 12-1518, except as may be required by other applicable statutes (Title 41).



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Eligible Agencies (Statewide):

This contract shall be for the use of all State of Arizona departments, agencies and boards. In addition, eligible universities, political subdivisions and nonprofit educational or public health institutions may participate at their discretion. In order to participate in this contract, a university, political subdivision, or nonprofit educational or public health institution must have entered into a cooperative purchasing agreement with the State Procurement Office as required by Arizona Revised Statutes 41-2642.

Contract Type (Term):

Firm fixed price term, indefinite quantity.

Term of Contract (One Year)

This contract shall commence upon award or as specified in the award documents and shall remain in effect for one year unless terminated, canceled, or extended as otherwise provided herein.

Contract Extension (Months)

By mutual written contract amendment, this contract may be extended for supplemental periods of up to a maximum of 48 months.

Estimated Quantities

This contract references quantities as a general indication of the needs of the state. However, the quantities shown are estimates only and the state reserves the right to increase or decrease any quantities actually acquired. No commitment of any kind is made concerning quantities. Each potential contractor should take this fact into consideration.

Non-Exclusive Contract

This contract is awarded with the understanding and agreement that it is for the sole convenience of the State of Arizona. The state reserves the right to obtain like goods or services from another source when necessary. Off-contract purchase authorization (SPO form 150) may only be approved by the State Procurement Administrator. Approval shall be at the exclusive discretion of the State Procurement Administrator and shall be final. However, approval shall be granted only after a proper review and when deemed to be appropriate. Off-contract procurement shall be consistent with the Arizona Procurement Code.

Post Consumer Recycled Content:

In support of the Arizona Recycling Program, the State has chosen to emphasize the post consumer content of the recycled products that are bid for statewide contracts. The EPA definition of post consumer will be adhered to. Items must contain a minimum of 10% post consumer material.

Inventory

The State of Arizona has an ongoing requirement for the products indicated in this contract. It is an express condition that the contractor shall maintain a reasonable stock on hand for delivery to the requesting agency. Failure to maintain such a stock may result in contract cancellation.

Current Products

All products offered in this contract shall be in current and ongoing production; shall have been formally announced for general marketing purposes; shall be a model or type currently functioning in a user (paying customer) environment and capable of meeting or exceeding all specifications and requirements set forth in this contract.

Ordering Process

Upon award of a contract by the State Procurement Office, any designated agency may procure the specific material and/or service awarded by the issuance of a contract release order/purchase order to the appropriate contractor. Each contract release order/purchase order must cite the correct Arizona contract number. The award of a contract shall be in accordance with the Arizona Procurement Code and all transactions and procedures required by the code for public bidding have been complied with. A contract release order/purchase order for the awarded material and/or service that cites the correct Arizona contract number is the only document required for the agency to order and the contractor to deliver the material and /or service.



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Any attempt to represent any material and/or service not specifically awarded as being under contract with the State of Arizona is a violation of the contract and the Arizona Procurement Code. Any such action is subject to the legal and contractual remedies available to the state inclusive of, but not limited to, contract cancellation, suspension and/or debarment of the contractor.

Credit/State of Arizona Purchasing Card Ordering

Any authorized agency may procure the specific material and/or service awarded by utilizing the card as a method of ordering/payment with the awarded contractor. The awarded contractor shall be responsible for ensuring compliance to all contract requirements (including contract pricing) for all credit/purchase card transactions made against any resultant contract(s).

Optional Discount Rates

The contractor(s) shall be responsible for disclosing and honoring all applicable discount rates contained herein (i.e. Purchasing Card, Electronic Ordering Systems, Quantity Purchase, Special Educational and Prompt Payment discounts) to effected agencies/political subdivisions. Disclosure shall be made during all verbal and written communications order conformations and on invoicing activities made under the resultant contract(s). Failure to disclose and include all applicable discount rates to contracted customers may result in contract cancellation.

Telephone Ordering Support

Contractor(s) shall accept collect telephone calls and/or provide and maintain a toll-free number for the state's procurement usage. The telephones number(s) are available on Attachment C included with this contract. Failure to maintain this service may be cause for cancellation of the contract.

Pricing

All pricing shall be firm, fixed and be inclusive of all labor, equipment, materials, products, freight (FOB Destination), insurance, and all other costs incidental to the products bid (excluding applicable state and local taxes).

Contractor(s) are obligated to honor their price quotes for dispensers, credit for returned pallets, and inside delivery charge in Attachment E. These optional prices will be used as needed, when needed by the state. Also, the state may or may not elect to purchase these options.

Taxes Not Included in Price

Prices offered shall not include applicable state and local taxes. The state will pay all applicable taxes. Taxes must be listed as a separate item on all invoices.

Minimum Order

The minimum dollar value of orders to be issued under this contract is \$100.00. For shipments less than the established minimum, transportation charges may be added as a separate item on the invoice except at no time shall the freight charges exceed the amount normally charged for shipments from the nearest trade area.

Order Quantities

Orders are to be made in case lots only.

Delivery (Days)

All deliveries shall be made within 14 days of receipt of a contract release order/purchase order.

Shipping F.O.B. Statewide

Prices shall be F.O.B. Destination to any delivery location in the State of Arizona, delivered to the specified receiving point as required by the customer agency at the time of order. Contractor shall retain title and control of all goods until they are delivered, received and contract of coverage has been completed. All risk of transportation and all related charges shall be the responsibility of the contractor. All claims for visible and concealed damage shall be filed by the contractor. The State will notify the contractor promptly of any damaged goods and shall assist the contractor in arranging for inspection.

Packaging (Recovered Materials)

Contractors are encouraged to offer products packaged in containers using recovered materials suitable for the intended use. "Recovered



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Materials" is defined as post-consumer waste (any products generated by a business or consumer which have served their intended end use, and which have been separated or diverted from solid waste for the purpose of collection, recycling and disposition).

Packing Slip

Each shipment shall include a packing slip showing the contract number and the quantity shipped . Packing Slip shall also show the invoice number and the contract release order/ purchase order number.

Defective Products

All defective products shall be replaced and exchanged by the contractor. The cost of transportation, unpacking, inspection, repacking, reshipping or other like expenses shall be paid by the vendor. All replacement products must be received by the state within seven (7) days of initial notification.

Return Policy (For reasons other than Fault or Error of the Contractor)

In the event ordered and delivered items are returned to the contractor due solely to a management decision by the ordering agency and not due to any fault or error by the contractor, the contractor shall be entitled to payment for restocking at 10% of the invoiced cost of the returned items plus the cost of transportation from the contractor to the ordering agency. The transportation charges shall not exceed the least expensive rate by common carrier for the category and weight of the items returned. In addition, the freight cost for the return of the items plus any cost necessary to insure receipt of the returned items by the contractor shall be paid by the ordering agency. Items returned under this provision must be shipped back to the contractor by the ordering agency not later than 30 calendar days after initial receipt of the items from the contractor and must be returned unused in the original packaging including any instruction manuals or other material accompanying the initial shipment

Billing

All billing notices shall include delivery time, and contractual payment terms. Items are to be identified by the name, model number, contract number, line item number, and serial number if applicable. Any contract release order/purchase order issued by the requesting agency shall refer to the contract number and line item number(s).

Payment

The contractor shall submit to the issuing agency, after delivery of the products listed by the issuing agency's contract release order/purchase order, an invoice in conformance with the pricing schedule of this contract. The issuing agency shall process the invoice for prompt payment in accordance with the standard operating procedures of the state.

Price Adjustment (After 180 Days)

Prices offered by contractor(s) shall remain firm for a period of at least 180 days from the effective date of contract. Upon completion of this initial period, if a contractor has received an increase in prices from the manufacturer/mill, the contractor may request, in writing, an increase in prices to the State Procurement Office. A certified letter from the manufacturer/mill showing price increases must accompany the request. Price increases shall not exceed manufacturer/mill price increases. Any increased prices must remain firm for 180 days.

The contractor should submit any proposed price increase request 30 days in advance of any price change for proper consideration. Failure to submit such price increase within this established timeframe may result in such request being denied.

The State Procurement Office shall determine whether the requested price increase or an alternate option, is in the best interest of the State. Approval shall be the sole discretion of the State and shall be incorporated only by issuance of a contract amendment document (citing approved price increase and the effective date thereof).

Price Reductions

Price reductions may be submitted to the state for consideration at any time during the contract period. The contractor shall offer the state a price reduction on the contract product(s) concurrent with a published price reduction made by the manufacturer to other customers. The state at its own discretion may accept a price reduction. The contractor shall request, in writing, a price reduction and provide the following:

1. A formal announcement from the manufacturer that the cost of the contract product has been reduced.



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- Documentation, i.e., published cost lists, from the manufacturer showing, to the satisfaction of the state, the actual cost reduction.
- Documentation showing that the published cost reductions have been offered to other distributors.

Product Discontinuance (Categories)

In the event that a product or model is discontinued by the manufacturer, the state at its sole discretion may allow the contractor to provide a substitute for the discontinued item. The contractor shall request permission to substitute a new product or model and provide the following:

- A formal announcement from the manufacturer that the product or model has been discontinued.
- Documentation from the manufacturer that names the replacement product or model.
- Documentation that provides clear and convincing evidence that the replacement meets or exceeds all specifications required and remains within the same category defined by the original solicitation.
- Documentation that provides clear and convincing evidence that the replacement will be compatible with all the functions or uses of the discontinued product or model.
- Documentation confirming that the price for the replacement is the same as or less than the discontinued model.
- As applicable, if a sample is requested, notification will be given whether the sample is acceptable, or is rejected, a reason shall be given.

Cancellation

The state reserves the right to cancel the whole or any part of this contract due to failure of the contractor to carry out any obligation, term, or condition of the contract. The state will issue a written notice to the contractor for acting or failing to act as in any of the following:

The contractor provides personnel that do not meet the requirements of the contract.

The contractor fails to perform adequately the services required in the contract.

The contractor attempts to impose on the state, personnel which are of an unacceptable quality.

The contractor fails to furnish the required product within the time stipulated in the contract.

The contractor fails to make progress in the performance of the requirements of the contract and/or gives the state a positive indication that the contractor will not or cannot perform to the requirements of the contract.

If the contractor does not correct the above problem(s) within ten (10) days after receiving the notice of default, the state may cancel the contract. If the state cancels the contract pursuant to this clause, the state reserves all rights or claims to damage for breach of contract.

Contract Default

- The state, by written notice of default to the contractor, may terminate the whole or any part of this contract in any one of the following circumstances:
 - If the contractor fails to make delivery of the supplies or to perform the services within the time specified; or
 - If the contractor fails to perform any of the other provisions of this contract; and fails to remedy the situations within a period of ten (10) days after receipt of notice.



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B. In the event the state terminates this contract in whole or part, the state may procure supplies or services similar to those terminated, and the contractor shall be liable to the state for any excess costs for such similar supplies or services.

Licenses

Contractor shall maintain in current status all federal, state and local licenses and permits required for the operation of the business conducted by the contractor.

Contraband

Any person who takes into or out of, or attempts to take into or out of a correctional facility or the grounds belonging to adjacent to a correctional facility, any item not specifically authorized by the correctional facility shall be prosecuted under the provisions of the Arizona Revised Statutes. All persons, including employees and visitors, entering upon these confines are subject to routine searches of their person, vehicles, property of packages.

DEFINITION - A.R.S. § 13-2501

Contraband means any dangerous drug, narcotic drug, intoxication liquor of any kind, deadly weapon, dangerous instrument, explosive or any other article whose use or possession would endanger the safety, security, or preservation of order in a correctional institution or any person therein. (Any other article includes any substance which could cause abnormal behavior, i.e. marijuana, non-prescription medication, etc.)

PROMOTING PRISON CONTRABAND - A.R.S. § 13-2505

1. A person, not otherwise authorized by law, commits promoting prison contraband:
 - A. By knowingly taking contraband into a correctional facility or the grounds of such a facility; or
 - B. By knowingly conveying contraband to any person confined in a correctional facility; or
 - C. By knowingly making, obtaining or possessing contraband while being confined in a correctional facility.
2. Promoting prison contraband is a Class 5 felony.

Insurance

A. Without limiting any liabilities or any other obligation of the Contractor, the Contractor shall purchase and maintain, in a company or companies lawfully authorized to do business in the State of Arizona, and rated at least "A VII" in the current A.M. Best's, the minimum insurance coverage below:

1. Commercial General Liability, with minimum limits of \$1,000,000.00 per occurrence, and an unimpaired products and completed operations aggregate limit and general aggregate minimum limit of \$2,000,000.00. Coverage shall be at least as broad as the Insurance Service Office, Inc. Form CG00010196, issued on an Occurrence basis, and endorsed to add the State of Arizona as an Additional Insured with reference to this contract. The policy shall include coverage for:

Bodily Injury;

Broad Form Property Damage (including completed operations);

Personal Injury;

Blanket Contractual Liability;

Products and Completed Operations, and this coverage shall extend for one year past acceptance, cancellation or termination of the services or work defined in this contract;

Fire Legal Liability.

2. Business Automobile Liability, with minimum limits of \$1,000,000.00 per occurrence combined single limit, with Insurance Service Office, Inc. Declarations to include Symbol One (Any Auto) applicable to claims arising from bodily injury, death or property damage arising out of



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the ownership, maintenance or use of any auto. The policy shall be endorsed to add the State of Arizona as an Additional Insured with reference to this contract.

3. Worker's Compensation (Coverage A): Statutory Arizona benefits;
Employer's Liability (Coverage B): \$500,000.00 each accident;
\$500,000.00 each employee/disease;
\$1,000,000.00 policy limit/disease.

Policy Shall Include endorsement for All State coverage for state of hire.

4. Professional Liability Insurance with minimum limits of \$1,000,000.00 Each Claim (or Each Wrongful Act) with a Retroactive Liability Date (if applicable to Claims-Made coverage) the same as the effective date of this contract. The policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Work or Specifications of this contract and, at the discretion of the State of Arizona, shall include one of the following types of Professional Liability policies:

Directors and Officers;
Errors and Omissions;
Medical Malpractice;
Druggists Professional;
Architects/Engineers Professional;
Lawyers Professional;
Teachers Professional;
Accountants Professional;
Social Workers Professional.

The State of Arizona shall be named as an Additional Insured as its interests may appear.

The policy shall contain an Extended Claim Reporting Provision of not less than one year following termination of the policy.

- B. The State of Arizona reserves the right to request and receive certified copies of all policies and endorsements within ten calendar days of contract signature.

- C. Certificates of Insurance acceptable to the State of Arizona shall be issued and delivered prior to the commencement of the work defined in this contract, and shall identify the contract number and include certified copies of endorsements naming the State of Arizona as Additional Insured for liability coverages. The certificates, insurance policies and endorsements required by this paragraph shall contain a provision that coverages afforded will not be canceled until at least 50 days prior written notice has been given to the State of Arizona. All coverages, conditions, limits and endorsements shall remain in full force and effect as required in this contract.

- D. Failure on the part of the Contractor to meet these requirements shall constitute a material breach of contract, upon which the State of Arizona may immediately terminate this agreement or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, and all monies so paid by the State of Arizona shall be repaid by the Contractor upon demand, or the State of Arizona may offset the cost of the premiums against any monies due to the contractor. Costs for coverages broader than those required or for limits in excess of those required shall not be charged to the State of Arizona. Contractor and its insurer(s) providing the required coverages shall waive their rights of recovery against the State of Arizona, its Departments, Employees and Officers, Agencies, Boards and Commissions.

Safety Standards

All items supplied on this contract must comply with the current applicable occupational safety and health standards of the State of Arizona Industrial Commission, The National Electric Code, and The National Fire Protection Association Standards, American National Standards Institute and American Society for Testing and Materials (ASTM).

State Contract Show Availability

As a statewide contractor, the contractor is eligible to participate in an exhibition of products and services for the state agency and eligible



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political subdivision personnel in a centralized event. The show has been in place since 1984 and regularly attracts over 200 booths and 600 state contract users.

Usage Reports (reporting/submission requirements):

The contractor shall be required to furnish contract usage report(s) during the entire term of the resultant contract(s). Usage reports shall delineate all acquisition activities governed by the contract. The information contained in these reports and the accurate and timely submission thereof are critical components used by the state to determine actual contract usage by individual state agencies and political subdivision contract customers. The format of these reports shall be based on Solicitation Exhibits A and B and shall be supplied at no additional cost to the state. Contractors are encouraged to submit usage reports in electronic format (i.e. compact disc, diskettes).

All usage report required under this contract shall be due at the end of each twelve-month contract period. Failure by a contractor to submit accurate and timely usage reports against this contract may result in contract cancellation and possible determination(s) by the state as a non-responsible bidder concerning future solicitations.



Specifications

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PAPER: TOILET, TOWEL, NAPKIN & FACIAL TISSUES

SPECIFICATIONS

1. All paper products in this contract are divided into two categories consisting of Mill Paper Products and Converted/Repackaged Paper Products as defined below:

A. **Mill Paper Products** are paper products whose logos and trade names are given to distinguish it as produced by a manufacturer/mill and is protected by the manufacturer/mill's registered trademark.

The following are State-recognized manufacturers/mills and samples of their trade names:

Bay West (EcoSoft, Dublsoft and Sirrus);

Georgia-Pacific (Envision Acclaim, Preference, and Dixie);

Kimberly Clark (Kleenex, Scott, and Tradition);

Marcal Paper (Surprise, Bella, Fluff-out, Polycase);

Procter and Gamble (Bounty and Charmin);

SCA Tissue (Park Avenue, Coronet, Main Street, Second Nature, and Encore/Ovation).

B. **Converted/Repackaged Paper Products** are produced by companies that are primarily in the business of converting and repackaging paper products. Converters/Repackagers are companies that buys paper rolls from paper manufacturers/mills, cuts, and packages them into finished products. The source of paper being traceable to a mill is not a requirement in this category.

The following are examples of Converted/Repackaged products:

Advantage;

Carolina Paper Converter;

Cellynne;

Excell;

FDS;

Health Gards;

Omni;

Seventh Generation; etc.

2. All products shall dispense properly from the correct fixture when loaded according to directions.
3. Toilet tissue shall be unglazed.
4. All products shall have no disagreeable odor, either wet or dry.
5. Edges of all products shall be cleanly cut and not ragged. Products shall not contain holes, tears, wrinkles, foreign materials or dust.
6. Towels shall be folded or rolled as specified. Folded towels shall be stacked evenly and banded.
7. Towels and tissues shall be packed in shipping containers of the type, size, and kind commonly used for that purpose and in a manner that will ensure acceptance by common carrier and safe delivery to the point of destination.
8. All products should be compatible for use in standard types of tissue dispensers currently in use by eligible agencies.
9. Palletizing:
At no extra cost, the state may request palletized deliveries for orders of 10 cartons or more. If palletized shipments are requested, it shall conform to the following:
 - Palletized on a single-face hardwood pallet, in good condition, with three (3), 2" x 4" runners lengthwise the pallet
 - Deck boards to be 3/4" minimum thickness with 1 1/2" maximum spacing



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- Length: 44" minimum- 48" maximum Width: 36" minimum-48" maximum
- Height: 5'7" including pallet
- Weight: 4,000 maximum gross pounds

Pallets are to be securely banded or shrink-wrapped and loads shall not exceed the size of the pallet. Pallets should be returnable for Credit (see Attachment E, Optional Price Section).

10. At the option of the state, an agency may request inside delivery to a specific location (see Attachment E, Optional Price Section). Inside Delivery shall be defined as delivery of the product inside a specific office, business, or building.
11. In support of the Arizona Recycling Program, the State has chosen to emphasize the post consumer content of the recycled products that are bid for statewide contracts. The EPA definition of post consumer will be adhered to. Items must contain a minimum of 10% post consumer material.



Price Sheet

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For the goods and/or services specified herein, the following apply:

- Prompt Payment Discount: If payment is made within N/A calendar days after acceptance of goods and/or services, the above quoted price, excluding sales tax, shall be discounted by N/A%. This discount shall be applied to all Agency purchase transactions, excluding those initialized utilizing a credit or "Purchasing" card.
- Notice: The State will assume that the price(s) offered do not include any applicable transaction privilege (sales) taxes. If the products and/or services specified require transaction privilege (sales) taxes, they are to be described and itemized separately on the Offer.
- Sales Tax Percent: 8.1%. (See Uniform Instructions to Offerors, paragraph 3.J.)

CONVERTED/REPACKAGED PAPER PRODUCT CATEGORY

LINE NO.	COMMODITY DESCRIPTION
310	Toilet Seat Cover , One Ply, ½ Fold; Size: Approximately 15" Width x 17" Length; 250 Sheets Per Package; 5,000 Sheets per case Converter/Repackager: H & L International Brand Name: H & L Product/SKU No. RO-H & L Recycled: Yes Price Per Case: \$25.10 Number of Packages Per Case: 20
340	Tissue, Toilet, Roll, One-Ply, Jumbo; White; Size: 3.75" Width X 4,000 Feet per Roll; Diameter: Approximately 12" Converter/Repackager: Cellynne Brand Name: Advantage Product/SKU No. 2010 Recycled: Yes Price Per Case: \$18.00 Number of Rolls Per Case: 6



Price Sheet

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Tissue, Toilet, Roll, Two-Ply, Jumbo, White; Size: Approximately 3.75" x 2000 Feet Per Roll; Diameter: Approximately 12"
Converter/Repackager: Cellynne
Brand Name: Advantage
Product/SKU No. 2030
Recycled: Yes
Price Per Case: \$18.00
Number of Rolls Per Case: 6

380

Towel, Paper, Single-Fold, White, 250 Sheets Per Package; Sheet Size: 9.25" x 10.25"
Converter/Repackager: Georgia Pacific
Brand Name: Advantage
Product/SKU No. 1070
Recycled: Yes
Price Per Case: \$14.90
Number of Packages Per Case: 16

420

Towel, Paper, C-Fold, White, 240 Sheets Per Package; Sheet Size: 10.25" x 13"
Converter/Repackager: Georgia Pacific
Brand Name: Advantage
Product/SKU No. 1010
Recycled: Yes
Price Per Case: \$11.00
Number of Packages Per Case: 10



Attachment

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ATTACHMENT C TELEPHONE ORDERING SUPPORT (SUBMIT WITH BID)

All contractors shall accept collect telephone calls and/or provide and maintain a toll-free number and or have local phone numbers (Phoenix Metro) for the state's procurement usage. Failure to maintain these services may be cause for cancellation of the contract.

Local phone number: 480-607-2930

Toll Free Number: 877-628-2255

Facsimile numbers: 480-609-7461 Local – Phoenix Area
866-329-6281 Toll Free Fax

ATTACHMENT E PRICE SECTION (OPTIONAL)

LINE NO.	DISPENSER MANUFACTURER & MODEL/SKU NUMBER	UNIT PRICE
310	Impact 1120, Plastic, White	\$4.50
340	Jofel 01001, Plastic, White	\$15.00
350	Jofel 01001, Plastic, White	\$15.00
380	Jofel A05102T. Plastic, Smoke	\$8.50
420	Jofel 05002, Plastic, Smoke	\$11.50
OPTIONAL CREDIT FOR RETURNED PALLETS (If requested by Agency) (See Specifications Item No. 9)		\$N/A/Pallets
OPTIONAL CHARGES FOR INSIDE DELIVERY (If requested by Agency) (See Specifications Item No. 10)		\$13.00/Pallet

End of Contract AD030015-003 Document



Contract Summary

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CONTRACT NUMBER: AD030015 - 004

CONTRACT TITLE: Paper: Toilet, Towel, Napkin, & Facial Tissues

CONTRACT TYPE: Statewide Contract

CONTRACT PERIOD: July 01, 2003

THRU: June 30, 2004

CONTRACTOR: Unisource Maintenance Supply Systems

CONTACT NAME : Cookie Whipple

ADDRESS: 844 N 47th Ave

Phoenix, AZ 85043

TELEPHONE: 602 278-2516

FAX NUMBER: 602 233-3790

CONTRACTING AUTHORITY: State Procurement Office

CONTACT NAME: Elmer Garcia

TELEPHONE: 602 542-9126

F.O.B. TERMS: FOB Delivered

DELIVERY: 14 Days ARO

PAYMENT TERMS: Net 30 Days

COMPLETE PRICING

INFORMATION WEBPAGE: <http://sporas.ad.state.az.us/ContractInfo/GS/AD030015/>



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Version 7

1. **Definition of Terms.** As used in this Solicitation and any resulting Contract, the terms listed below are defined as follows:
 - 1.1 "Attachment" means any item the Solicitation requires the Offeror to submit as part of the Offer.
 - 1.2 "Contract" means the combination of the Solicitation, including the Uniform and Special Instructions to Offerors, the Uniform and Special Terms and Conditions, and the Specifications and Statement or Scope of Work; the Offer and any Best and Final Offers; and any Solicitation Amendments or Contract Amendments.
 - 1.3 "Contract Amendment" means a written document signed by the Procurement Officer that is issued for the purpose of making changes in the Contract.
 - 1.4 "Contractor" means any person who has a Contract with the State.
 - 1.5 "Days" means calendar days unless otherwise specified.
 - 1.6 "Exhibit" means any item labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the Solicitation.
 - 1.7 "Gratuity" means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.
 - 1.8 "Materials" means all property, including equipment, supplies, printing, insurance and leases of property but does not include land, a permanent interest in land or real property or leasing space.
 - 1.9 "Procurement Officer" means the person, or his or her designee, duly authorized by the State to enter into and administer Contracts and make written determinations with respect to the Contract.
 - 1.10 "Services" means the furnishing of labor, time or effort by a contractor or subcontractor which does not involve the delivery of a specific end product other than required reports and performance, but does not include employment agreements or collective bargaining agreements.
 - 1.11 "Subcontract" means any Contract, express or implied, between the Contractor and another party or between a subcontractor and another party delegating or assigning, in whole or in part, the making or furnishing of any material or any service required for the performance of the Contract.
 - 1.12 "State" means the State of Arizona and Department or Agency of the State that executes the Contract.
 - 1.13 "State Fiscal Year" means the period beginning with July 1 and ending June 30,
2. **Contract Interpretation**
 - 2.1 Arizona Law. The Arizona law applies to this Contract including, where applicable, the Uniform Commercial Code as adopted by the State of Arizona and the Arizona Procurement Code, Arizona Revised Statutes (A.R.S.) Title 41, Chapter 23, and its implementing rules, Arizona Administrative Code (A.A.C.) Title 2, Chapter 7.
 - 2.2 Implied Contract Terms. Each provision of law and any terms required by law to be in this Contract are a part of this Contract as if fully stated in it.
 - 2.3 Contract Order of Precedence. In the event of a conflict in the provisions of the Contract, as accepted by the State and as they may be amended, the following shall prevail in the order set forth below:
 - 2.3.1 Special Terms and Conditions;
 - 2.3.2 Uniform Terms and Conditions;
 - 2.3.3 Statement or Scope of Work;
 - 2.3.4 Specifications;
 - 2.3.5 Attachments;
 - 2.3.6 Exhibits;
 - 2.3.7 Documents referenced or included in the Solicitation.
 - 2.4 Relationship of Parties. The Contractor under this Contract is an independent Contractor. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.
 - 2.5 Severability. The provisions of this Contract are severable. Any term or condition deemed illegal or invalid shall not affect any other term or condition of the Contract.
 - 2.6 No Parole Evidence. This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.
 - 2.7 No Waiver. Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver



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of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.

3. Contract administration and operation.

- 3.1 Records. Under A.R.S. § 35-214 and § 35-215, the Contractor shall retain and shall contractually require each subcontractor to retain all data and other “records” relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract. All records shall be subject to inspection and audit by the State at reasonable times. Upon request, the Contractor shall produce a legible copy of any or all such records.
- 3.2 Non-Discrimination. The Contractor shall comply with State Executive Order No. 99-4 and all other applicable Federal and State laws, rules and regulations, including the Americans with Disabilities Act.
- 3.3 Audit. Pursuant to ARS § 35-214, at any time during the term of this Contract and five (5) years thereafter, the Contractor’s or any subcontractor’s books and records shall be subject to audit by the State and, where applicable, the Federal Government, to the extent that the books and records relate to the performance of the Contract or Subcontract.
- 3.4 Facilities Inspection and Materials Testing. The Contractor agrees to permit access to its facilities, subcontractor facilities and the Contractor’s processes or services, at reasonable times for inspection of the facilities or materials covered under this Contract. The State shall also have the right to test, at its own cost, the materials to be supplied under this Contract. Neither inspection of the Contractor’s facilities nor materials testing shall constitute final acceptance of the materials or services. If the State determines non-compliance of the materials, the Contractor shall be responsible for the payment of all costs incurred by the State for testing and inspection.
- 3.5 Notices. Notices to the Contractor required by this Contract shall be made by the State to the person indicated on the Offer and Acceptance form submitted by the Contractor unless otherwise stated in the Contract. Notices to the State required by the Contract shall be made by the Contractor to the Solicitation Contact Person indicated on the Solicitation cover sheet, unless otherwise stated in the Contract. An authorized Procurement Officer and an authorized Contractor representative may change their respective person to whom notice shall be given by written notice to the other and an amendment to the Contract shall not be necessary.
- 3.6 Advertising, Publishing and Promotion of Contract. The Contractor shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the Procurement Officer.
- 3.7 Property of the State. Any materials, including reports, computer programs and other deliverables, created under this Contract are the sole property of the State. The Contractor is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. The Contractor shall not use or release these materials without the prior written consent of the State.
- 3.8 Ownership of Intellectual Property
Any and all intellectual property, including but not limited to copyright, invention, trademark, tradename, service mark, and/or trade secrets created or conceived pursuant to or as a result of this contract and any related subcontract (“Intellectual Property”), shall be work made for hire and the State shall be considered the creator of such Intellectual Property. The agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract shall own (for and on behalf of the State) the entire right, title and interest to the Intellectual Property throughout the world. Contractor shall notify the State, within thirty (30) days, of the creation of any Intellectual Property by it or its subcontractor(s). Contractor, on behalf of itself and any subcontractor (s), agrees to execute any and all document(s) necessary to assure ownership of the Intellectual Property vests in the State and shall take no affirmative actions that might have the effect of vesting all or part of the Intellectual Property in any entity other than the State. The Intellectual Property shall not be disclosed by contractor or its subcontractor(s) to any entity not the State without the express written authorization of the agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract.

4. Costs and Payments

- 4.1 Payments. Payments shall comply with the requirements of A.R.S. Titles 35 and 41, Net 30 days. Upon receipt and acceptance of goods or services, the Contractor shall submit a complete and accurate invoice for payment from the State within thirty (30) days.
- 4.2 Delivery. Unless stated otherwise in the Contract, all prices shall be F.O.B. Destination and shall include all freight delivery and unloading at the destination.
- 4.3 Applicable Taxes.



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- 4.3.1 Payment of Taxes. The Contractor shall be responsible for paying all applicable taxes.
- 4.3.2 State and Local Transaction Privilege Taxes. The State of Arizona is subject to all applicable state and local transaction privilege taxes. Transaction privilege taxes apply to the sale and are the responsibility of the seller to remit. Failure to collect such taxes from the buyer does not relieve the seller from its obligation to remit taxes.
- 4.3.3 Tax Indemnification. Contractor and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall, and require all subcontractors to hold the State harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal, and/or state and local laws and regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.
- 4.3.4 IRS W9 Form. In order to receive payment the Contractor shall have a current I.R.S. W9 Form on file with the State of Arizona, unless not required by law.
- 4.4 Availability of Funds for the Next State fiscal year. Funds may not presently be available for performance under this Contract beyond the current state fiscal year. No legal liability on the part of the State for any payment may arise under this Contract beyond the current state fiscal year until funds are made available for performance of this Contract.
- 4.5 Availability of Funds for the current State fiscal year. Should the State Legislature enter back into session and reduce the appropriations or for any reason and these goods or services are not funded, the State may take any of the following actions:
- 4.5.1 Accept a decrease in price offered by the contractor;
- 4.5.2 Cancel the Contract
- 4.5.3 Cancel the contract and re-solicit the requirements.
- 5. Contract changes**
- 5.1 Amendments. This Contract is issued under the authority of the Procurement Officer who signed this Contract. The Contract may be modified only through a Contract Amendment within the scope of the Contract. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by the procurement officer in writing or made unilaterally by the Contractor are violations of the Contract and of applicable law. Such changes, including unauthorized written Contract Amendments shall be void and without effect, and the Contractor shall not be entitled to any claim under this Contract based on those changes.
- 5.2 Subcontracts. The Contractor shall not enter into any Subcontract under this Contract for the performance of this contract without the advance written approval of the Procurement Officer. The Contractor shall clearly list any proposed subcontractors and the subcontractor's proposed responsibilities. The Subcontract shall incorporate by reference the terms and conditions of this Contract.
- 5.3 Assignment and Delegation. The Contractor shall not assign any right nor delegate any duty under this Contract without the prior written approval of the Procurement Officer. The State shall not unreasonably withhold approval.
- 6. Risk and Liability**
- 6.1 Risk of Loss: The Contractor shall bear all loss of conforming material covered under this Contract until received by authorized personnel at the location designated in the purchase order or Contract. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with the Contractor regardless of receipt.
- 6.2 Indemnification
- 6.2.1 Contractor/Vendor Indemnification (Not Public Agency) The parties to this contract agree that the State of Arizona, its' departments, agencies, boards and commissions shall be indemnified and held harmless by the contractor for the vicarious liability of the State as a result of entering into this contract. However, the parties further agree that the State of Arizona, its' departments, agencies, boards and commissions shall be responsible for its' own negligence. Each party to this contract is responsible for its' own negligence.
- 6.2.2 Public Agency Language Only Each party (as 'indemnitor') agrees to indemnify, defend, and hold harmless the other party (as 'indemnitee') from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as 'claims') arising out of bodily injury of any person (including death) or property damage but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its' officers, officials, agents, employees, or volunteers."
- 6.3 Indemnification - Patent and Copyright. The Contractor shall indemnify and hold harmless the State against any liability, including costs and expenses, for infringement of any patent, trademark or copyright arising out of Contract performance or use by the State of materials furnished or work performed under this Contract. The State shall reasonably notify the Contractor of any claim for which it



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may be liable under this paragraph. If the contractor is insured pursuant to A.R.S. § 41-621 and § 35-154, this section shall not apply.

6.4 Force Majeure.

6.4.1 Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force majeure. The term "*force majeure*" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts; injunctions-intervention-acts; or failures or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.

6.4.2 Force Majeure shall not include the following occurrences:

6.4.2.1 Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market;

6.4.2.2 Late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition; or

6.4.2.3 Inability of either the Contractor or any subcontractor to acquire or maintain any required insurance, bonds, licenses or permits.

6.4.3 If either party is delayed at any time in the progress of the work by force majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practicable and no later than the following working day, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be delivered or mailed certified-return receipt and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by Contract Amendment for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Contract.

6.4.4 Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that such delay or failure is caused by force majeure.

6.5 Third Party Antitrust Violations. The Contractor assigns to the State any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to the Contractor, toward fulfillment of this Contract.

7. Warranties

7.1 Liens. The Contractor warrants that the materials supplied under this Contract are free of liens and shall remain free of liens.

7.2 Quality. Unless otherwise modified elsewhere in these terms and conditions, the Contractor warrants that, for one year after acceptance by the State of the materials, they shall be:

7.2.1 Of a quality to pass without objection in the trade under the Contract description;

7.2.2 Fit for the intended purposes for which the materials are used;

7.2.3 Within the variations permitted by the Contract and are of even kind, quantity, and quality within each unit and among all units;

7.2.4 Adequately contained, packaged and marked as the Contract may require; and

7.2.5 Conform to the written promises or affirmations of fact made by the Contractor.

7.3 Fitness. The Contractor warrants that any material supplied to the State shall fully conform to all requirements of the Contract and all representations of the Contractor, and shall be fit for all purposes and uses required by the Contract.

7.4 Inspection/Testing. The warranties set forth in subparagraphs 7.1 through 7.3 of this paragraph are not affected by inspection or testing of or payment for the materials by the State.

7.5 Year 2000.

7.5.1 Notwithstanding any other warranty or disclaimer of warranty in this Contract, the Contractor warrants that all products delivered and all services rendered under this Contract shall comply in all respects to performance and delivery requirements of the specifications and shall not be adversely affected by any date-related data Year 2000 issues. This warranty shall survive the expiration or termination of this Contract. In addition, the defense of *force majeure* shall not apply to the Contractor's failure to perform specification requirements as a result of any date-related data Year 2000 issues.

7.5.2 Additionally, notwithstanding any other warranty or disclaimer of warranty in this Contract, the Contractor warrants that each hardware, software, and firmware product delivered under this Contract shall be able to accurately process date/time data (including but not limited to calculation, comparing, and sequencing) from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000 and leap year calculations, to the extent that other information technology utilized by the State in combination with the information technology being acquired under this Contract properly exchanges date-time data with it. If this Contract requires that the information technology products being acquired perform as a system, or that the information technology products being acquired



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perform as a system in combination with other State information technology, then this warranty shall apply to the acquired products as a system. The remedies available to the State for breach of this warranty shall include, but shall not be limited to, repair and replacement of the information technology products delivered under this Contract. In addition, the defense of *force majeure* shall not apply to the failure of the Contractor to perform any specification requirements as a result of any date-related data Year 2000 issues.

- 7.6 Compliance With Applicable Laws. The materials and services supplied under this Contract shall comply with all applicable Federal, state and local laws, and the Contractor shall maintain all applicable license and permit requirements.
- 7.7 Survival of Rights and Obligations after Contract Expiration or Termination.
- 7.71 Contractor's Representations and Warranties. All representations and warranties made by the Contractor under this Contract shall survive the expiration or termination hereof. In addition, the parties hereto acknowledge that pursuant to A.R.S. § 12-510, except as provided in A.R.S. § 12-529, the State is not subject to or barred by any limitations of actions prescribed in A.R.S., Title 12, Chapter 5.
- 7.7.2 Purchase Orders. The Contractor shall, in accordance with all terms and conditions of the Contract, fully perform and shall be obligated to comply with all purchase orders received by the Contractor prior to the expiration or termination hereof, unless otherwise directed in writing by the Procurement Officer, including, without limitation, all purchase orders received prior to but not fully performed and satisfied at the expiration or termination of this Contract.

8. State's Contractual Remedies

- 8.1 Right to Assurance. If the State in good faith has reason to believe that the Contractor does not intend to, or is unable to perform or continue performing under this Contract, the Procurement Officer may demand in writing that the Contractor give a written assurance of intent to perform. Failure by the Contractor to provide written assurance within the number of Days specified in the demand may, at the State's option, be the basis for terminating the Contract under the Uniform Terms and Conditions or other rights and remedies available by law or provided by the contract.
- 8.2 Stop Work Order.
- 8.2.1 The State may, at any time, by written order to the Contractor, require the Contractor to stop all or any part, of the work called for by this Contract for period(s) of days indicated by the State after the order is delivered to the Contractor. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.
- 8.2.2 If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the Contractor shall resume work. The Procurement Officer shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.
- 8.3 Non-exclusive Remedies. The rights and the remedies of the State under this Contract are not exclusive.
- 8.4 Nonconforming Tender. Materials or services supplied under this Contract shall fully comply with the Contract. The delivery of materials or services or a portion of the materials or services that do not fully comply constitutes a breach of contract. On delivery of nonconforming materials or services, the State may terminate the Contract for default under applicable termination clauses in the Contract, exercise any of its rights and remedies under the Uniform Commercial Code, or pursue any other right or remedy available to it.
- 8.5 Right of Offset. The State shall be entitled to offset against any sums due the Contractor, any expenses or costs incurred by the State, or damages assessed by the State concerning the Contractor's non-conforming performance or failure to perform the Contract, including expenses, costs and damages described in the Uniform Terms and Conditions.

9. Contract Termination

- 9.1 Cancellation for Conflict of Interest. Pursuant to A.R.S. § 38-511, the State may cancel this Contract within three (3) years after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the State is or becomes at any time while the Contract or an extension of the Contract is in effect an employee of or a consultant to any other party to this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when the Contractor receives written notice of the cancellation unless the notice specifies a later time. If the Contractor is a political subdivision of the State, it may also cancel this Contract as provided in A.R.S. § 38-511.
- 9.2 Gratuities. The State may, by written notice, terminate this Contract, in whole or in part, if the State determines that employment or a Gratuity was offered or made by the Contractor or a representative of the Contractor to any officer or employee of the State for the purpose of influencing the outcome of the procurement or securing the Contract, an amendment to the Contract, or favorable treatment concerning the Contract, including the making of any determination or decision about contract performance. The State, in addition to



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any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by the Contractor.

9.3 Suspension or Debarment. The State may, by written notice to the Contractor, immediately terminate this Contract if the State determines that the Contractor has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract shall attest that the contractor is not currently suspended or debarred. If the contractor becomes suspended or debarred, the contractor shall immediately notify the State.

9.4 Termination for Convenience. The State reserves the right to terminate the Contract, in whole or in part at any time, when in the best interests of the State without penalty or recourse. Upon receipt of the written notice, the Contractor shall stop all work, as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to the State. In the event of termination under this paragraph, all documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State upon demand. The Contractor shall be entitled to receive just and equitable compensation for work in progress, work completed and materials accepted before the effective date of the termination. The cost principles and procedures provided in A.A.C. R2-7-701 shall apply.

9.5 Termination for Default.

9.5.1 In addition to the rights reserved in the contract, the State may terminate the Contract in whole or in part due to the failure of the Contractor to comply with any term or condition of the Contract, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Contract. The Procurement Officer shall provide written notice of the termination and the reasons for it to the Contractor.

9.5.2 Upon termination under this paragraph, all goods, materials, documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State on demand.

9.5.3 The State may, upon termination of this Contract, procure, on terms and in the manner that it deems appropriate, materials or services to replace those under this Contract. The Contractor shall be liable to the State for any excess costs incurred by the State in procuring materials or services in substitution for those due from the Contractor.

9.6 Continuation of Performance Through Termination. The Contractor shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.

10. **Contract Claims.** All contract claims or controversies under this Contract shall be resolved according to A.R.S. Title 41, Chapter 23, Article 9, and rules adopted thereunder.

11. Arbitration

The parties to this Contract agree to resolve all disputes arising out of or relating to this contract through arbitration, after exhausting applicable administrative review, to the extent required by A.R.S. § 12-1518, except as may be required by other applicable statutes (Title 41).



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Eligible Agencies (Statewide):

This contract shall be for the use of all State of Arizona departments, agencies and boards. In addition, eligible universities, political subdivisions and nonprofit educational or public health institutions may participate at their discretion. In order to participate in this contract, a university, political subdivision, or nonprofit educational or public health institution must have entered into a cooperative purchasing agreement with the State Procurement Office as required by Arizona Revised Statutes 41-2642.

Contract Type (Term):

Firm fixed price term, indefinite quantity.

Term of Contract (One Year)

This contract shall commence upon award or as specified in the award documents and shall remain in effect for one year unless terminated, canceled, or extended as otherwise provided herein.

Contract Extension (Months)

By mutual written contract amendment, this contract may be extended for supplemental periods of up to a maximum of 48 months.

Estimated Quantities

This contract references quantities as a general indication of the needs of the state. However, the quantities shown are estimates only and the state reserves the right to increase or decrease any quantities actually acquired. No commitment of any kind is made concerning quantities. Each potential contractor should take this fact into consideration.

Non-Exclusive Contract

This contract is awarded with the understanding and agreement that it is for the sole convenience of the State of Arizona. The state reserves the right to obtain like goods or services from another source when necessary. Off-contract purchase authorization (SPO form 150) may only be approved by the State Procurement Administrator. Approval shall be at the exclusive discretion of the State Procurement Administrator and shall be final. However, approval shall be granted only after a proper review and when deemed to be appropriate. Off-contract procurement shall be consistent with the Arizona Procurement Code.

Post Consumer Recycled Content:

In support of the Arizona Recycling Program, the State has chosen to emphasize the post consumer content of the recycled products that are bid for statewide contracts. The EPA definition of post consumer will be adhered to. Items must contain a minimum of 10% post consumer material.

Inventory

The State of Arizona has an ongoing requirement for the products indicated in this contract. It is an express condition that the contractor shall maintain a reasonable stock on hand for delivery to the requesting agency. Failure to maintain such a stock may result in contract cancellation.

Current Products

All products offered in this contract shall be in current and ongoing production; shall have been formally announced for general marketing purposes; shall be a model or type currently functioning in a user (paying customer) environment and capable of meeting or exceeding all specifications and requirements set forth in this contract.

Ordering Process

Upon award of a contract by the State Procurement Office, any designated agency may procure the specific material and/or service awarded by the issuance of a contract release order/purchase order to the appropriate contractor. Each contract release order/purchase order must cite the correct Arizona contract number. The award of a contract shall be in accordance with the Arizona Procurement Code and all transactions and procedures required by the code for public bidding have been complied with. A contract release order/purchase order for the awarded material and/or service that cites the correct Arizona contract number is the only document required for the agency to order and the contractor to deliver the material and /or service.



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Any attempt to represent any material and/or service not specifically awarded as being under contract with the State of Arizona is a violation of the contract and the Arizona Procurement Code. Any such action is subject to the legal and contractual remedies available to the state inclusive of, but not limited to, contract cancellation, suspension and/or debarment of the contractor.

Credit/State of Arizona Purchasing Card Ordering

Any authorized agency may procure the specific material and/or service awarded by utilizing the card as a method of ordering/payment with the awarded contractor. The awarded contractor shall be responsible for ensuring compliance to all contract requirements (including contract pricing) for all credit/purchase card transactions made against any resultant contract(s).

Optional Discount Rates

The contractor(s) shall be responsible for disclosing and honoring all applicable discount rates contained herein (i.e. Purchasing Card, Electronic Ordering Systems, Quantity Purchase, Special Educational and Prompt Payment discounts) to effected agencies/political subdivisions. Disclosure shall be made during all verbal and written communications order conformations and on invoicing activities made under the resultant contract(s). Failure to disclose and include all applicable discount rates to contracted customers may result in contract cancellation.

Telephone Ordering Support

Contractor(s) shall accept collect telephone calls and/or provide and maintain a toll-free number for the state's procurement usage. The telephones number(s) are available on Attachment C included with this contract. Failure to maintain this service may be cause for cancellation of the contract.

Pricing

All pricing shall be firm, fixed and be inclusive of all labor, equipment, materials, products, freight (FOB Destination), insurance, and all other costs incidental to the products bid (excluding applicable state and local taxes).

Contractor(s) are obligated to honor their price quotes for dispensers, credit for returned pallets, and inside delivery charge in Attachment E. These optional prices will be used as needed, when needed by the state. Also, the state may or may not elect to purchase these options.

Taxes Not Included in Price

Prices offered shall not include applicable state and local taxes. The state will pay all applicable taxes. Taxes must be listed as a separate item on all invoices.

Minimum Order

The minimum dollar value of orders to be issued under this contract is \$100.00. For shipments less than the established minimum, transportation charges may be added as a separate item on the invoice except at no time shall the freight charges exceed the amount normally charged for shipments from the nearest trade area.

Order Quantities

Orders are to be made in case lots only.

Delivery (Days)

All deliveries shall be made within 14 days of receipt of a contract release order/purchase order.

Shipping F.O.B. Statewide

Prices shall be F.O.B. Destination to any delivery location in the State of Arizona, delivered to the specified receiving point as required by the customer agency at the time of order. Contractor shall retain title and control of all goods until they are delivered, received and contract of coverage has been completed. All risk of transportation and all related charges shall be the responsibility of the contractor. All claims for visible and concealed damage shall be filed by the contractor. The State will notify the contractor promptly of any damaged goods and shall assist the contractor in arranging for inspection.

Packaging (Recovered Materials)

Contractors are encouraged to offer products packaged in containers using recovered materials suitable for the intended use. "Recovered



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Materials" is defined as post-consumer waste (any products generated by a business or consumer which have served their intended end use, and which have been separated or diverted from solid waste for the purpose of collection, recycling and disposition).

Packing Slip

Each shipment shall include a packing slip showing the contract number and the quantity shipped . Packing Slip shall also show the invoice number and the contract release order/ purchase order number.

Defective Products

All defective products shall be replaced and exchanged by the contractor. The cost of transportation, unpacking, inspection, repacking, reshipping or other like expenses shall be paid by the vendor. All replacement products must be received by the state within seven (7) days of initial notification.

Return Policy (For reasons other than Fault or Error of the Contractor)

In the event ordered and delivered items are returned to the contractor due solely to a management decision by the ordering agency and not due to any fault or error by the contractor, the contractor shall be entitled to payment for restocking at 10% of the invoiced cost of the returned items plus the cost of transportation from the contractor to the ordering agency. The transportation charges shall not exceed the least expensive rate by common carrier for the category and weight of the items returned. In addition, the freight cost for the return of the items plus any cost necessary to insure receipt of the returned items by the contractor shall be paid by the ordering agency. Items returned under this provision must be shipped back to the contractor by the ordering agency not later than 30 calendar days after initial receipt of the items from the contractor and must be returned unused in the original packaging including any instruction manuals or other material accompanying the initial shipment

Billing

All billing notices shall include delivery time, and contractual payment terms. Items are to be identified by the name, model number, contract number, line item number, and serial number if applicable. Any contract release order/purchase order issued by the requesting agency shall refer to the contract number and line item number(s).

Payment

The contractor shall submit to the issuing agency, after delivery of the products listed by the issuing agency's contract release order/purchase order, an invoice in conformance with the pricing schedule of this contract. The issuing agency shall process the invoice for prompt payment in accordance with the standard operating procedures of the state.

Price Adjustment (After 180 Days)

Prices offered by contractor(s) shall remain firm for a period of at least 180 days from the effective date of contract. Upon completion of this initial period, if a contractor has received an increase in prices from the manufacturer/mill, the contractor may request, in writing, an increase in prices to the State Procurement Office. A certified letter from the manufacturer/mill showing price increases must accompany the request. Price increases shall not exceed manufacturer/mill price increases. Any increased prices must remain firm for 180 days.

The contractor should submit any proposed price increase request 30 days in advance of any price change for proper consideration. Failure to submit such price increase within this established timeframe may result in such request being denied.

The State Procurement Office shall determine whether the requested price increase or an alternate option, is in the best interest of the State. Approval shall be the sole discretion of the State and shall be incorporated only by issuance of a contract amendment document (citing approved price increase and the effective date thereof).

Price Reductions

Price reductions may be submitted to the state for consideration at any time during the contract period. The contractor shall offer the state a price reduction on the contract product(s) concurrent with a published price reduction made by the manufacturer to other customers. The state at its own discretion may accept a price reduction. The contractor shall request, in writing, a price reduction and provide the following:

1. A formal announcement from the manufacturer that the cost of the contract product has been reduced.



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- Documentation, i.e., published cost lists, from the manufacturer showing, to the satisfaction of the state, the actual cost reduction.
- Documentation showing that the published cost reductions have been offered to other distributors.

Product Discontinuance (Categories)

In the event that a product or model is discontinued by the manufacturer, the state at its sole discretion may allow the contractor to provide a substitute for the discontinued item. The contractor shall request permission to substitute a new product or model and provide the following:

- A formal announcement from the manufacturer that the product or model has been discontinued.
- Documentation from the manufacturer that names the replacement product or model.
- Documentation that provides clear and convincing evidence that the replacement meets or exceeds all specifications required and remains within the same category defined by the original solicitation.
- Documentation that provides clear and convincing evidence that the replacement will be compatible with all the functions or uses of the discontinued product or model.
- Documentation confirming that the price for the replacement is the same as or less than the discontinued model.
- As applicable, if a sample is requested, notification will be given whether the sample is acceptable, or is rejected, a reason shall be given.

Cancellation

The state reserves the right to cancel the whole or any part of this contract due to failure of the contractor to carry out any obligation, term, or condition of the contract. The state will issue a written notice to the contractor for acting or failing to act as in any of the following:

The contractor provides personnel that do not meet the requirements of the contract.

The contractor fails to perform adequately the services required in the contract.

The contractor attempts to impose on the state, personnel which are of an unacceptable quality.

The contractor fails to furnish the required product within the time stipulated in the contract.

The contractor fails to make progress in the performance of the requirements of the contract and/or gives the state a positive indication that the contractor will not or cannot perform to the requirements of the contract.

If the contractor does not correct the above problem(s) within ten (10) days after receiving the notice of default, the state may cancel the contract. If the state cancels the contract pursuant to this clause, the state reserves all rights or claims to damage for breach of contract.

Contract Default

- The state, by written notice of default to the contractor, may terminate the whole or any part of this contract in any one of the following circumstances:
 - If the contractor fails to make delivery of the supplies or to perform the services within the time specified; or
 - If the contractor fails to perform any of the other provisions of this contract; and fails to remedy the situations within a period of ten (10) days after receipt of notice.



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B. In the event the state terminates this contract in whole or part, the state may procure supplies or services similar to those terminated, and the contractor shall be liable to the state for any excess costs for such similar supplies or services.

Licenses

Contractor shall maintain in current status all federal, state and local licenses and permits required for the operation of the business conducted by the contractor.

Contraband

Any person who takes into or out of, or attempts to take into or out of a correctional facility or the grounds belonging to adjacent to a correctional facility, any item not specifically authorized by the correctional facility shall be prosecuted under the provisions of the Arizona Revised Statutes. All persons, including employees and visitors, entering upon these confines are subject to routine searches of their person, vehicles, property of packages.

DEFINITION - A.R.S. § 13-2501

Contraband means any dangerous drug, narcotic drug, intoxication liquor of any kind, deadly weapon, dangerous instrument, explosive or any other article whose use or possession would endanger the safety, security, or preservation of order in a correctional institution or any person therein. (Any other article includes any substance which could cause abnormal behavior, i.e. marijuana, non-prescription medication, etc.)

PROMOTING PRISON CONTRABAND - A.R.S. § 13-2505

1. A person, not otherwise authorized by law, commits promoting prison contraband:
 - A. By knowingly taking contraband into a correctional facility or the grounds of such a facility; or
 - B. By knowingly conveying contraband to any person confined in a correctional facility; or
 - C. By knowingly making, obtaining or possessing contraband while being confined in a correctional facility.
2. Promoting prison contraband is a Class 5 felony.

Insurance

A. Without limiting any liabilities or any other obligation of the Contractor, the Contractor shall purchase and maintain, in a company or companies lawfully authorized to do business in the State of Arizona, and rated at least "A VII" in the current A.M. Best's, the minimum insurance coverage below:

1. Commercial General Liability, with minimum limits of \$1,000,000.00 per occurrence, and an unimpaired products and completed operations aggregate limit and general aggregate minimum limit of \$2,000,000.00. Coverage shall be at least as broad as the Insurance Service Office, Inc. Form CG00010196, issued on an Occurrence basis, and endorsed to add the State of Arizona as an Additional Insured with reference to this contract. The policy shall include coverage for:

Bodily Injury;

Broad Form Property Damage (including completed operations);

Personal Injury;

Blanket Contractual Liability;

Products and Completed Operations, and this coverage shall extend for one year past acceptance, cancellation or termination of the services or work defined in this contract;

Fire Legal Liability.

2. Business Automobile Liability, with minimum limits of \$1,000,000.00 per occurrence combined single limit, with Insurance Service Office, Inc. Declarations to include Symbol One (Any Auto) applicable to claims arising from bodily injury, death or property damage arising out of



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the ownership, maintenance or use of any auto. The policy shall be endorsed to add the State of Arizona as an Additional Insured with reference to this contract.

3. Worker's Compensation (Coverage A): Statutory Arizona benefits;
Employer's Liability (Coverage B): \$500,000.00 each accident;
\$500,000.00 each employee/disease;
\$1,000,000.00 policy limit/disease.

Policy Shall Include endorsement for All State coverage for state of hire.

4. Professional Liability Insurance with minimum limits of \$1,000,000.00 Each Claim (or Each Wrongful Act) with a Retroactive Liability Date (if applicable to Claims-Made coverage) the same as the effective date of this contract. The policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Work or Specifications of this contract and, at the discretion of the State of Arizona, shall include one of the following types of Professional Liability policies:

Directors and Officers;
Errors and Omissions;
Medical Malpractice;
Druggists Professional;
Architects/Engineers Professional;
Lawyers Professional;
Teachers Professional;
Accountants Professional;
Social Workers Professional.

The State of Arizona shall be named as an Additional Insured as its interests may appear.

The policy shall contain an Extended Claim Reporting Provision of not less than one year following termination of the policy.

- B. The State of Arizona reserves the right to request and receive certified copies of all policies and endorsements within ten calendar days of contract signature.

- C. Certificates of Insurance acceptable to the State of Arizona shall be issued and delivered prior to the commencement of the work defined in this contract, and shall identify the contract number and include certified copies of endorsements naming the State of Arizona as Additional Insured for liability coverages. The certificates, insurance policies and endorsements required by this paragraph shall contain a provision that coverages afforded will not be canceled until at least 50 days prior written notice has been given to the State of Arizona. All coverages, conditions, limits and endorsements shall remain in full force and effect as required in this contract.

- D. Failure on the part of the Contractor to meet these requirements shall constitute a material breach of contract, upon which the State of Arizona may immediately terminate this agreement or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, and all monies so paid by the State of Arizona shall be repaid by the Contractor upon demand, or the State of Arizona may offset the cost of the premiums against any monies due to the contractor. Costs for coverages broader than those required or for limits in excess of those required shall not be charged to the State of Arizona. Contractor and its insurer(s) providing the required coverages shall waive their rights of recovery against the State of Arizona, its Departments, Employees and Officers, Agencies, Boards and Commissions.

Safety Standards

All items supplied on this contract must comply with the current applicable occupational safety and health standards of the State of Arizona Industrial Commission, The National Electric Code, and The National Fire Protection Association Standards, American National Standards Institute and American Society for Testing and Materials (ASTM).

State Contract Show Availability

As a statewide contractor, the contractor is eligible to participate in an exhibition of products and services for the state agency and eligible



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political subdivision personnel in a centralized event. The show has been in place since 1984 and regularly attracts over 200 booths and 600 state contract users.

Usage Reports (reporting/submission requirements):

The contractor shall be required to furnish contract usage report(s) during the entire term of the resultant contract(s). Usage reports shall delineate all acquisition activities governed by the contract. The information contained in these reports and the accurate and timely submission thereof are critical components used by the state to determine actual contract usage by individual state agencies and political subdivision contract customers. The format of these reports shall be based on Solicitation Exhibits A and B and shall be supplied at no additional cost to the state. Contractors are encouraged to submit usage reports in electronic format (i.e. compact disc, diskettes).

All usage report required under this contract shall be due at the end of each twelve-month contract period. Failure by a contractor to submit accurate and timely usage reports against this contract may result in contract cancellation and possible determination(s) by the state as a non-responsible bidder concerning future solicitations.



Specifications

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PAPER: TOILET, TOWEL, NAPKIN & FACIAL TISSUES

SPECIFICATIONS

1. All paper products in this contract are divided into two categories consisting of Mill Paper Products and Converted/Repackaged Paper Products as defined below:

A. **Mill Paper Products** are paper products whose logos and trade names are given to distinguish it as produced by a manufacturer/mill and is protected by the manufacturer/mill's registered trademark.

The following are State-recognized manufacturers/mills and samples of their trade names:

Bay West (EcoSoft, Dublsoft and Sirrus);

Georgia-Pacific (Envision Acclaim, Preference, and Dixie);

Kimberly Clark (Kleenex, Scott, and Tradition);

Marcal Paper (Surprise, Bella, Fluff-out, Polycase);

Procter and Gamble (Bounty and Charmin);

SCA Tissue (Park Avenue, Coronet, Main Street, Second Nature, and Encore/Ovation).

B. **Converted/Repackaged Paper Products** are produced by companies that are primarily in the business of converting and repackaging paper products. Converters/Repackagers are companies that buys paper rolls from paper manufacturers/mills, cuts, and packages them into finished products. The source of paper being traceable to a mill is not a requirement in this category.

The following are examples of Converted/Repackaged products:

Advantage;

Carolina Paper Converter;

Cellynne;

Excell;

FDS;

Health Gards;

Omni;

Seventh Generation; etc.

2. All products shall dispense properly from the correct fixture when loaded according to directions.
3. Toilet tissue shall be unglazed.
4. All products shall have no disagreeable odor, either wet or dry.
5. Edges of all products shall be cleanly cut and not ragged. Products shall not contain holes, tears, wrinkles, foreign materials or dust.
6. Towels shall be folded or rolled as specified. Folded towels shall be stacked evenly and banded.
7. Towels and tissues shall be packed in shipping containers of the type, size, and kind commonly used for that purpose and in a manner that will ensure acceptance by common carrier and safe delivery to the point of destination.
8. All products should be compatible for use in standard types of tissue dispensers currently in use by eligible agencies.
9. Palletizing:
At no extra cost, the state may request palletized deliveries for orders of 10 cartons or more. If palletized shipments are requested, it shall conform to the following:
 - Palletized on a single-face hardwood pallet, in good condition, with three (3), 2" x 4" runners lengthwise the pallet
 - Deck boards to be 3/4" minimum thickness with 1 1/2" maximum spacing



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- Length: 44" minimum- 48" maximum Width: 36" minimum-48" maximum
- Height: 5'7" including pallet
- Weight: 4,000 maximum gross pounds

Pallets are to be securely banded or shrink-wrapped and loads shall not exceed the size of the pallet. Pallets should be returnable for Credit (see Attachment E, Optional Price Section).

10. At the option of the state, an agency may request inside delivery to a specific location (see Attachment E, Optional Price Section). Inside Delivery shall be defined as delivery of the product inside a specific office, business, or building.
11. In support of the Arizona Recycling Program, the State has chosen to emphasize the post consumer content of the recycled products that are bid for statewide contracts. The EPA definition of post consumer will be adhered to. Items must contain a minimum of 10% post consumer material.



Price Sheet

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For the goods and/or services specified herein, the following apply:

- Prompt Payment Discount: If payment is made within N/A calendar days after acceptance of goods and/or services, the above quoted price, excluding sales tax, shall be discounted by N/A%. This discount shall be applied to all Agency purchase transactions, excluding those initialized utilizing a credit or "Purchasing" card.
- Notice: The State will assume that the price(s) offered do not include any applicable transaction privilege (sales) taxes. If the products and/or services specified require transaction privilege (sales) taxes, they are to be described and itemized separately on the Offer.
- Sales Tax Percent: 8.1%. (See Uniform Instructions to Offerors, paragraph 3.J.)

CONVERTED/REPACKAGED PAPER PRODUCT CATEGORY

LINE NO.	COMMODITY DESCRIPTION
310	Toilet Seat Cover , One Ply, ½ Fold; Sheet Size: Approximately 15" Width x 17" Length; 250 Sheets Per Package Brand Name: FDS Product/SKU No. SCVRS Recycled: Yes Price Per Case: \$25.49 Number of Packages Per Case: 20
320	Tissue, Toilet, Roll, One-Ply, Perforated, White; Sheet Size: 4.5" x 4.5" (+/- .25") Length; 1,000 Sheets Per Roll Brand Name: Caresse – 1 Product/SKU No. Caresse - 1 Recycled: Yes Price Per Case: \$29.64 Number of Rolls Per Case: 96
330	Tissue, Toilet, Roll, Two-Ply, Perforated; White; Sheet Size: 4.5"x 4.5", 500 Sheets Per Roll; Brand Name: Caresse II Product/SKU No. Caresse II Recycled: Yes Price Per Case: \$25.49 Number of Rolls Per Case: 25.49



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CONVERTED/REPACKAGED PAPER PRODUCT CATEGORY

340

Tissue, Toilet, Roll, One-Ply, Jumbo; White; Size: 3.75" x 4,000 Feet per Roll; Diameter: 12"

Brand Name: Stefco

Product/SKU No. JT 4000-1

Recycled: Yes

Price Per Case: \$18.19

Number of Rolls Per Case: 6

350

Tissue, Toilet, Roll, Two-Ply, Jumbo, White; Size: 3.75" x 2000 Feet Per Roll; Approximately 12"

Brand Name: Stefco

Product/SKU No. JT 2000-2

Recycled: Yes

Price Per Case: \$18.19

Number of Rolls Per Case: 6



Attachment

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ATTACHMENT C TELEPHONE ORDERING SUPPORT

All contractors shall accept collect telephone calls and/or provide and maintain a toll-free number and or have local phone numbers (Phoenix Metro) for the state's procurement usage. Failure to maintain these services may be cause cancellation of the contract.

Local phone number: 602-278-2516

Toll-Free Number: 800-914-7735

Facsimile number: 800-223-5569

ATTACHMENT D PROGRAM DISCLOSURES (OPTIONAL)

Unisource participates in the State of Arizona Purchasing Card (P-Card) Program. No additional discount is offered.

ATTACHMENT E PRICE SECTION (OPTIONAL)

LINE NO.	DISPENSER MANUFACTURER & MODEL/SKU NUMBER	UNIT PRICE
310	FDS – 3916677 White Plastic Dispenser	\$6.25
320	#57893 GP Stainless Steel Dispenser	\$40.00
330	#57893 GP Stainless Steel Dispenser	\$42.50
340	#56758 GP 12" Smoke Plastic Dispenser	\$21.50
	#59350 GP 12" Smoke Dispenser with Stub Roll	\$21.50
350	#56758 GP 12" Smoke Plastic Dispenser	\$21.50
	#59350 GP 12" Smoke Dispenser with Stub Roll	\$21.50
OPTIONAL CREDIT FOR RETURNED PALLETS (If requested by Agency) (See Specifications Item No. 9)		\$0/Pallet
OPTIONAL CHARGES FOR INSIDE DELIVERY (If requested by Agency) (See Specifications Item No. 10)		\$0/Pallet

End of Contract AD030015-004 Document